702.

SUPREME COURT OF THE UNITED STATES.

No. 129.

FREDERICK L. BARREDA AND PHILIP BARREDA, PLAINTIFFS IN ERROR,

vs.

BENJAMIN H. SILSBEE, JOHN H. SILSBEE, BENJAMIN W. STONE, WILLIAM STONE, GEORGE T. SANDERS AND WILLIAM D. PICKMAN.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, begun and held at the City of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-six.

Present: The Honorable William F. Giles, Judge of Maryland District; William H. Addison, Esquire, Attorney; John W. Watkins, Esquire, Marshal; Thomas Spicer, Clerk.

Among other, were the following proceedings, to wit:—

BENJAMIN H. SILSBEE, JOHN H. SILSBEE, BENJAMIN W. STONE, WILLIAM STONE, GEORGE T. SANDERS and WILLIAM D. PICKMAN,
vs.
FREDERICK L. BARREDA, PHILIP BARREDA.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and fifty-five, the said Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Sanders, and William D. Pickman, by Brown and Brune, their attorneys, declared in the Circuit Court here, against the said Frederick L. Barreda, and Philip Barreda, in a plea of trespass on the case, &c., in the words, and of the tenor following, to wit:—

Declaration.

Maryland District, set.

Frederick L. Barreda and Philip Barreda, trading under the firm of F. Barreda & Brother, and aliens and citizens of the Republic of Peru, late of the Maryland District, were summoned to answer unto Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Sanders, and William D. Pickman, owners of the ship Shirley, and citizens of the State of Massachusetts, in a plea of trespass on the case, &c.

And thereupon the said plaintiffs in this action, by Brown and Brune, and Reverdy Johnson, their attorneys, complain: For that, whereas the said defendants in this action, on the first day of October, in the year of our Lord eighteen hundred and fifty-five, to wit, at the district aforesaid, were indebted to the said plaintiffs in a large sum of money, to wit, in the sum of thirty thousand dollars for the work and labor, care, diligence and attendance of the said plaintiffs, before that time done, performed and bestowed by the said plaintiffs in and about the business of the said defendants, for them and at their special instance and request, and for divers materials, and other necessary things, made, done, furnished, used and

applied in and about the work, labor and business for the said defendants, and at their like special instance and request: And also in another like sum of money, for sundry matters properly chargeable in account, as by the particular account thereof, herewith into court brought, may, and doth more fully and at large appear: And also, in another like sum of money, for divers goods, wares and merchandise, by the said plaintiffs before that time sold and delivered to the said defendants, and at their like special instance and request: And also, in another like sum of money, for money by the plaintiffs before that time lent and advanced to, and paid, laid out and expended for the said defendants, and at their special instance and request: And also, in another like sum of money, for so much other money by the said defendants, before that time had and received to and for the use of the said plaintiffs; and being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay them the said several sums of money in this count mentioned, when the said defendants should be thereunto requested.

And whereas, also, the said defendants, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, accounted with the said plaintiffs, of and concerning divers other sums of money, before that time due and owing from the said defendants to the said plaintiffs, and then in arrear and unpaid, and upon such accounting the said defendants were then and there found to be in arrear and indebted to the said plaintiffs in another large sum of money, to wit, the further sum of thirty thousand dollars, of like lawful money; and being so found to be in arrear and indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiffs to pay them the last mentioned sum of money when the said defendants should be thereto afterwards requested.

Nevertheless, the said defendants, not regarding their said promises and undertakings, have not yet paid the aforesaid several sums of money, or either of them, or any part of either of them, to the said plaintiffs (although so to do the said defendants were requested by the said plaintiffs, afterwards, to wit, on the day and year last aforesaid, and often afterwards at the district aforesaid), but to pay the same the said defendants have hitherto altogether refused, and do still refuse so to do, to the damage of said plaintiffs, fifty thousand dollars, and therefore they bring suit, &c.

BROWN & BRUNE,
REVERDY JOHNSON,
Pl't'ffs' Atty's.

Which said declaration is thus indorsed, to wit:—

"Mr. Spicer,

Docket this suit by consent to November term, 1855, of Cir. Co't, U. S.

BROWN & BRUNE,
For Pl'tffs.

WALLIS & THOMAS,
For Def'ts."

And thereupon, at the November term of the said Circuit Court, to wit, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-five, comes into the Circuit Court here the parties aforesaid by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-six, come again into the Circuit Court here the parties aforesaid by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty-six, come again into the Circuit Court here the parties aforesaid by their attorneys aforesaid.

Plea.

And the said Frederick L. Barreda and Philip Barreda, by their attorneys aforesaid, come and defend the force and injury when and so forth, and say, that they did not assume upon themselves in manner and form as the aforesaid Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George F. Sanders, and William D. Pickman, above against them have complained, and of this they put themselves upon the country.

Issue.

And the said Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Sanders, and William D. Pickman in like manner and so forth.

Therefore, let a jury thereon appear before the Court here, immediately, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c. Whereupon, for trying the issue aforesaid, it is ordered by the Court here that twenty persons from the panel of petit jurors returned to the Court here by the Marshal of the Maryland district aforesaid, be drawn by ballot; and thereupon the twenty

persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called, come, to wit:—

Jury.

George C. Morton, John M. Hauck, Jacob Beckley, Thomas W. Hellen, John Myers, William Owens, Washington Munroe, William N. Dorsett, Joseph W. Shaw, Wm. B. Howard, Wm. P. Patterson, Douglass Clopper; who being empanelled and sworn to say the truth in the premises, upon their oath do say:—

Verdict.

That the said Frederick L. Barreda and Philip Barreda did assume upon themselves in manner and form as the aforesaid Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Sanders, and William D. Pickman, within against them have complained, and they assess the damages of the said Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Sanders, and William D. Pickman, sustained by occasion of the non-performance of the promises and assumptions aforesaid, to the sum of thirty thousand nine hundred and forty-four dollars and sixty-two cents, current money.

Judgment.

Therefore, it is considered by the Court here that the said Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Sanders, and William D. Pickman, recover against the said Frederick L. Barreda and Philip Barreda, as well the sum of thirty thousand nine hundred and forty-four dollars and sixty-two cents, current money, their damages aforesaid, by the jurors aforesaid, in form aforesaid assessed, to be sustained by occasion of the non-performance of the promises and assumptions aforesaid, as the sum of by the Court hereunto the said Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Sanders, and William D. Pickman, on their assent adjudged, for their costs and charges by them about their suit in this behalf laid out and expended: And the said Frederick L. Barreda and Philip Barreda, in mercy, &c.

Memorandum. Before the jurors aforesaid withdrew from the bar of the court here, the said Frederick L. Barreda, and Philip Barreda, by their attorneys aforesaid, tendered to the court here their bills of exception, which were by the court here signed and sealed, and which are in the form following, to wit:—

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Defendants' 1st Exception.

IN THE CIRCUIT COURT OF THE UNITED STATES
for the Fourth Circuit in and for the District of Maryland.

SILSBEE and others
vs.
BARREDA & BROTHER.

The plaintiffs, to maintain the issue upon their part joined, proved that they were the owners of the ship Shirley, on the 11th of April, 1854 and theretofore, and continued so to be down to the time of the trial of this cause, and that the defendants Frederick L. Barreda, and Philip Barreda, constituted the firm of F. Barreda & Brother; on the said 11th of April, 1854, and continued so to do down to the time of the said trial. The plaintiffs then proved that the following correspondence had taken place at the dates of the respective letters following, between the plaintiffs and their counsel and the defendants, viz:—

Letter from B. H. Silsbee to F. Barreda & Brother, dated Salem, 8th June, 1855. *No.* 1.

SALEM, *June 8th*, 1855.

Messrs. F. Barreda & Brother:

Gentlemen: In April, '54, we chartered our ship "Shirley" to your house, to load guano at the Islands for $25 per ton, and an additional clause as follows: "The ship to have the benefit of any advance in the guano freights made by the charterers in the United States before she finishes loading at the Islands." We were induced to make this charter by the solicitations of Mr. Vernon Brown, acting as your agent. The clause above mentioned decided us to take this charter instead of one offered from Calcutta better than $25 per ton, from the Islands. Mr. Brown assured us that by chartering early we should receive every advantage from any rise on freights, which we felt almost certain would take place. He assured us that we should be dealt with in good faith, and from the high character given of your house by some of our friends who have the pleasure of a personal acquaintance, we never doubted such would be the case. Soon after a large number of vessels were chartered to go out empty and load for $30 per ton. Another class were chartered to proceed from California and Australia, touching at St. Thomas instead of Hampton Roads, for $26½; and (one ship at least, the "Black Warrior," of Baltimore), as we are informed, was chartered to proceed from Australia to the Islands, and load for Hampton Roads (similar voyage to the Shirley's) at $26; and only 80 lay days, equal at least to $27, and the usual number of lay days. In regard to the St Thomas charters, we would remark that when chartering our vessels, Mr. Brown remarked that he was authorized to pay $26½

for small vessels to go to St. Thomas for orders, but our ship was too large; a few weeks after he informs us these restrictions were removed, and he chartered vessels much larger than the "Shirley" on these terms, from St. Thomas; these vessels generally were ordered to New York.

You may imagine our astonishment, therefore, to learn from Mr. Brown that you did not intend to pay on these charters but $25 per ton; intimating that the lawyers had been consulted, and had found some way to avoid the obvious meaning of the clause quoted above. How this was to be done we did not inquire, not believing that he spoke by authority, or that a house of the high standing of your own would descend to so contemptible a trick. Our Captain writes from Callao, on the 17th of March, that "Mr. Barreda acknowledged that we are entitled to $26½ per ton, as their house paid that. We have no wish to claim anything more than belongs to us in simple justice, and should feel disposed to listen to any fair proposition you might make, though we doubt not we are legally entitled to $30 per ton. Please inform us where the Shirley is destined from Hampton Roads.

Yours respectfully,
(Signed) B. H. SILSBEE,
for Owners of Ship Shirley.

Letter from F. Barreda & Brother to B. H. Silsbee, Salem, dated Baltimore, 11th June, 1855. No. 2.

BALTIMORE, *June* 11*th*, 1855.

B. H. Silsbee, Esq., Salem:

Sir: Since the Shirley was chartered the freights for guano have remained at same rates that we were then paying. We took up some vessels with the privilege of using them outwards, as we did in several instances, and to these of course we allowed a compensation for said use, which had nothing to do with the rate on guano, as can be seen by looking at those charters.

It is true that we have taken legal advice on the subject, as some not very respectable ship owners intended to play on us *the contemptible trick* of forcing us to pay for home voyage the same rate paid when the outward freight was to our benefit. The destination of the Shirley will be fixed on her arrival.

Your obedient servants,
(Signed) F. BARREDA & BROTHER.

Letter (not signed) to F. Barreda & Brothers, dated Salem, June 13th, 1855. No. 3.

SALEM, *June* 13*th*, 1855.

Messrs. F. Barreda & Brothers:

Gentlemen: Yours of the 11th to our Mr. Silsbee is received. We are obliged for your prompt reply. In the matter of freight by the "Shirley" we were inclined to make a reasonable compromise,

or to refer the matter to any three merchants of high standing in New York or Boston.

The tone and tenor of your letter seems to preclude any such mode of settlement. We shall take legal advice in the matter, and should we find a reasonable chance of getting what we consider our just due, shall not relinquish our claim. If, on the other hand, the clause by which we were induced to make the charter means nothing, shall take what we can get and console ourselves that we have gained something in the way of experience.

Your obedient servant.

Letter from Reverdy Johnson and Brown & Brune, dated Balto., July 31, 1855. (No. 4.)

BALTIMORE, *July* 31, 1855.

Gentlemen: We have been employed as counsel for the owners of the ship Shirley to receive the balance of freight due by you to them under the charter party of said ship of the 11th of April, 1853. We have been shown an account rendered by you, according to which you state the balance due at $21,943 89, upon the 21–24 Sept. next. This account allows the ship only $25 per ton, and disregards the stipulation in the charter party that the ship shall have the benefit of any advance in the guano freight made by the charterers in the United States before the ship should finish loading at the islands. We are informed that the freight materially advanced before the completion of the vessel's loading, and we claim the benefit of this advance for the owners. We are instructed to take $5 per ton additional, if you are willing to settle at this rate, but we reserve the right in case of controversy to prove, that the advance was still greater. The owners of the ship desire to avoid litigation, and permit us to offer as they have always done to you, to refer the question whether or not there was an advance up to the time of loading, as mentioned in the charter party, to the arbitration of merchants of respectability of this city. You to pay such a sum in addition to the amount stated in your account above referred to as the arbitrators shall say was the advance prior to said period. If you refuse to refer the question as above suggested, we are instructed to demand payment of the balance, calculating the freight at $30 per ton, said balance to be paid by approved bills at two months date, or in cash less the usual discount, as you may prefer, in accordance with the stipulations of the charter party.

Requesting an early reply, we remain

Respectfully yours,
REVERDY JOHNSON,
BROWN & BRUNE.

Letter from F. Barreda & Brother, to Brown and Brune and R. Johnson, dated 1 August, 1855.

BALTIMORE, 1 *August*, 1855.

Messrs. Brown and Brune, and Reverdy Johnson, Esq. Present:

Gentlemen: Your favor of yesterday (31st ulto), was duly rec'd. In reply we have to state, that the pretensions of the owners of the "Shirley" for a rate of freight greater than that stipulated for in the charter party of that vessel cannot be admitted. We are not disposed to submit the matter to arbitration as proposed in your letter, and should the owners of the vessel persist in their demand, there is no other recourse we know of than to refer the matter to the courts, in which event we beg to refer you to our counsel, S. T. Wallis, Esq.

We are, gentlemen, very respectfully,
Your obed't servants,
Ppr. F. BARREDA & BROTHER,
J. M. MUR.

And further proved that the defendants had rendered to the plaintiffs the following account:

Account.

American ship Shirley and owners, in acc't with F. Barreda & Brother.

1855.			
July 21.	By freight on 1459 4. 2. 11 tons guano delivered this day as pr charter party, $25 pr ton,		$36,480 74
	10 allowance on 1459 9. 212 discharged from the vessel,		145 95
July 5.	To am't advanced in Balto.	$4,000 00	
10.	C. H. expenses at entry	74 70	
11.	Am't advanced in Balto.	8,000 00	
21.	Paid for discharging 1459 9. 2. 12 tons, at 45 c.	656 75	
	Interest on advance, $12,731 45 2 mos.	127 31	
	Commission on freight 5 c.	1,824 04	
	Balance due 21–24 Sept. carried down	21,943 89	
		$36,626 69	$36,626 69.
July 21.	By balance due 21–24 Sept., 1855		$21,943 89.

Mem'd of W'ts.		
No. 1. 20517 bags wg. gro.		3279017
2. 20 " " "		3568
	20537	3282585
Tare $66\frac{16}{100}$ 100 bags		13554
		3269031
Deduct 10 pr. ct. for waste No. 7		356
		3268675 1459. 4. 2. 11. tons.

And had admitted the balance thereby shown of $21,943 89, to have been due on the 21–24 September, 1855, and did still admit the same to be due at the trial of this case, and had, prior to the constitution of this suit, offered to pay the same, provided the plaintiffs would accept the same in full, but not otherwise, which the plaintiffs had refused to do, but offered to accept the said balance on account, and to give the defendants credit therefor, which the defendants in their turn had declined.

And it was admitted on both sides that the said account was correct, so far as it went, and that the charges therein made were proper, as well as the credits given. And thereupon the plaintiffs offered the depositions following, which, by permission of the court, and with the consent of the defendants, were read to the court and jury subject to all proper legal exceptions.

Deposition of Nicholas T. Snell, a witness for the plaintiffs, taken before Caleb W. Loring, Esq., U. S. Commissioner in the City of Boston, on the 17th day of March, A. D. 1856.

UNITED STATES OF AMERICA,
District of Massachusetts.

On this seventeenth day of March, A. D. eighteen hundred and fifty-six, before me, Caleb W. Loring, a duly appointed commissioner by the Circuit Court of the United States for the District of Massachusetts, under and by virtue of the laws of the United States, authorizing the appointment of commissioners for the taking of affidavits and bail, and for other purposes, personally appeared before me at my office, No. 39, in Court Street, in Boston, in said District of Massachusetts, Nicholas T. Snell, of Salem, in the said District of Massachusetts, a witness on the part of the plaintiffs in an action on the case pending in the Circuit Court of the United States for the fourth Circuit, in and for Maryland District, in which Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George F. Sanders, and William D. Pickman, are plaintiffs, and Frederick L. Barreda, and Philip Barreda are defendants.

And the said Nicholas T. Snell being first duly cautioned and

sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say to the following direct interrogatories, put by D. Thaxter, for the plaintiffs:—

1. State your name, age, residence, and occupation.

Answer. My name is Nicholas T. Snell; I am forty-five years old; I reside at Salem, and am a master mariner.

2d interrogatory. Whether or not were you master of the ship Shirley in 1854–5, and did you bring a cargo of guano in her from the Chinchas?

Answer. Yes, sir.

3d interrogatory. When was that cargo loaded?

Answer. It was taken on board between the 1st of January and 9th of March; I think we commenced on the eighth of January, and finished on the eighth of March, A. D. 1855, and left for Callao on 10th of March.

4th interrogatory. Where did you take the cargo to? and did you stop at Hampton Roads for orders?

Answer. I stopped at Hampton Roads for orders, and went to Baltimore in pursuance of those orders.

5th interrogatory. When did you unload your vessel at Baltimore?

Answer. Between the first and twenty-fifth of July.

6th interrogatory. How much guano did you discharge?

Answer. Fourteen hundred and seventy odd tons.

7th interrogatory. Who were the owners of the Shirley?

Answer. B. W. Stone, William Stone, Benjamin H. Silsbee, John H. Silsbee, William D. Pickman; I won't state positively, but I think there was another owner, George F. Sanders.

8th interrogatory. Please say whether the charter party handed you, was the charter party under which the guano was brought in the ship.

Answer. Yes, sir. It is annexed marked *marked* A. (C. W. L.)

9th interrogatory. State whether you went to Australia from New York, thence to Callao, and from thence to Chincha Islands, and took in a cargo of guano, and from thence to Callao again, and thence to Hampton Roads for orders, and from thence to Baltimore in pursuance of the orders in accordance to the terms, and in full performent of the charter party.

Answer. Yes, sir.

Cross-examined.

And to the following cross-interrogatories put by J. M. Bell, Esq, attorney for the def'ts.

1st cross-interrogatory. Did you carry any, and what cargo on voyage to Australia, and if so, what freight was carried, if any, or from Australia to Callao, and if so, did you carry, and what cargo, and if so, what freight was carried, if any? (Objected to.)

Answer. I had a general cargo from New York to Australia, a full cargo; no freight was carried, as it was owners' property; no

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cargo was carried from Australia to Callao. The cargo arrived safely at Australia.

2d cross-interrogatory. Whether or not was there an advertisement for freight for said vessel on her voyage from New York to Australia, if you know? (Objected to.)

Answer. I think there was an advertisement in the New York papers; I think now that there was five or six dollars freight between New York and Australia, not on owners' account. It was very trifling.

3d cross-interrogatory. When did you sail from New York?

Answer. About first of May, 1854, between first and fourth.

Re-examined in chief.

And to the following additional direct interrogatory by David Thaxter, Esq., Attorney for the plaintiffs.

1. Additional interrogatory. (If 2d cross-interrogatory is admitted.) Do you know of your own knowledge that the ship was advertised for freight in New York as you have stated?

Answer. I wouldn't swear positively that she was advertised, but my impression is that I saw it in a New York paper.

NICHOLAS T. SNELL.

UNITED STATES OF AMERICA,
District of Massachusetts.

I, Caleb William Loring, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, in the first circuit, under and by virtue of the laws of the United States, authorizing the appointment of commissioners for the taking of affidavits and bail and other purposes, do hereby certify that the reason for taking the foregoing deposition is, and the fact is that the said Snell is a material and necessary witness in the cause in the caption of the said deposition named, and that he lives in Salem in said Massachusetts, and more than one hundred miles, and the place of taking the deposition is more than one hundred miles from the place of trial of said cause.

I further certify that the said plaintiffs were present during the examination of said witness by their attorney, David Thaxter, and that notice of the taking of said deposition was served on the defendants' attorney, in the city of Baltimore, as will appear by the notice hereto annexed, and that the defendants appeared, and were present during the taking of said deposition by their attorney Joseph M. Bell. And I further certify that no further notification of the time and place of taking the said deposition, signed by me, was made out and served on the defendants, or their attorney or agent, to be present at the taking of the deposition, and to put interrogatories if he or they might think fit, because no one of them except said Bell is within one hundred miles of the city of Boston, where this deposition

is taken; and the said Bell was not known to be the agent or attorney of defendants until his said appearance at the taking of said deposition aforesaid.

I further certify that on the seventeenth day of March, in the year eighteen hundred and fifty-six, I was attended by said Snell, the said witness, who is of sound mind, and lawful age, and the said Snell having been by me first carefully examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did answer to the interrogatories and cross interrogatories put to him, and the testimony given by him, was by me reduced to writing in his presence and thereafterwards subscribed by him as and for his deposition in my presence. I have retained the said deposition in my possession for the purpose of sealing the same and depositing it in the Post Office in said Boston, the same with my own hand directed to the said circuit court for the fourth circuit in and for Maryland District.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto put my hand and seal, this thirty-first day of March, A. D. 1856.

[SEAL.] C. W. LORING,
U. S. Com. Dist. of Massachusetts.

Notice.

BENJAMIN H. SILSBEE and others
vs.
FREDERICK L. BARREDA and PHILIP BARREDA.

IN THE CIRCUIT COURT OF THE UNITED STATES
for the fourth Circuit in and for Maryland District.

Messrs. Wallis and Thomas.

Gentlemen: We hereby give you notice that on Monday the 17th of March, 1856, at 4 o'clock P. M., before C. William Loring, Esq., a commissioner of the United States, at his office No. 39 Court Street, Boston, Massachusetts, the depositions of witnesses will be taken on behalf of the plaintiffs in the above case, to be used on the trial thereof. We give you this notice in order that some one may appear for the defendants if they think proper, and cross examine the witnesses on their behalf.

Respectfully,
BROWN and BRUNE,
for Pl'tffs.

Baltimore, 10 March, 1856.

Service of notice admitted this 10th of March, 1856.
WALLIS and THOMAS.

Charter Party A. (*C. W. L.*)

Charter Party. BOSTON, *April 11th*, 1854.

It is hereby mutually agreed between me, B. H. Silsbee, acting owner of the ship Shirley, nine hundred and ten tons, register measurement, now at New York loading for Australia, on the one part, and F. Barreda and Brother, acting as agents for the Peruvian Government, on the other part, as follows :—

That the said vessel shall proceed to Callao from Australia where she is at present bound, and being tight, staunch and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands to take in her cargo.

After completing her loading of guano, the vessel to proceed direct to her destination. A full cargo of guano, not to exceed one-third above the register tonnage (unless otherwise agreed) to be furnished to the ship.

At the Chinca Islands, the vessel to be placed under the Mangueras to load, or, at the option of the charterers, the cargo to be placed in the ship's or charterer's boats, and in them conveyed on board, at ship's expense and shipper's risk.

Ninety running days to be allowed to the charterers for loading the ship at the Chincha Islands, to commence from the day the master gives notice, in writing, of being ready to receive and take on board, and to cease when the charterer's agents give notice that she is to receive no more cargo ; to be paid for at the rate of one hundred dollars per day, from the party delinquent to the party observant. The ship shall convey any specie that may be required for the payment of cargo, and any tools and bags for dunnage free of freight ; and must deliver free of charge either on board or along side any water that may be required at the guano ports, not exceeding seven tons.

The crew to sew up the mouths of the sacks if required free of expense, the charterers providing the twine; the sacks must be filled with guano, and used for lining the vessel ; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborer's daily pay while so employed.

The owners of the vessel to pay all port charges.

The said vessel shall, after completing her loading as before mentioned, proceed to Hampton Roads, where she is to remain until return post to receive orders from F. Barreda & Brother, from Baltimore, or their agents, to discharge in any safe port of sea or river not south of Hampton Roads or north of Cape Ann, and there, according to bills of lading, deliver her cargo, which is to be discharged and taken from alongside as fast as the custom of the port to which

she may be ordered will permit—the consignee having the liberty of naming the dock or wharf at which the cargo is to be landed.

The freight to be paid as under at the rate of twenty-five dollars ($25) in full per ton of 20 cwt. net, guano, custom-house weights. In calculating the freight, the proper per centage of water on all that turns out damaged is to be deducted.

The master, if required, to be supplied at Callao with a sum not exceeding ten thousand dollars, which, together with ten per cent. premium on the same and the cost of insurance on said premium and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners. And should the charterers or their agents think fit to advance any further sum on the credit of the freight for repairs, stores, and disbursements, such sums, with premium, interest, commission, and insurance, to be considered in part payment of freight to the master, the captain's receipt for which is to be binding on the owners; a part of the freight, not exceeding one-third, at the option of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignee; the captain to grant a receipt in triplicate for the amount of freight, when settled, stating also the number of tons of guano delivered.

The captain to sign bills of lading without reference to rate of freight, and without prejudice to this charter party.

The ship to be consigned to F. Barreda & Brother, or their agents at Callao and at the ports of discharge, who will charge in the first place one hundred and fifty dollars, and in the second five per cent. on the freight for managing the ship's business. And if, for any unforeseen event, the vessel should proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of F. Barreda & Brother, paying usual commissions, who shall perform all the business belonging to the ship.

Said agents are, at St. Thomas, Messrs. Pretto & Aldecoa; at Rio Janeiro, Messrs. Naylor, Brother & Co.; at Valparaiso, or ports of Chili, José Cervero, Esq., or his agents; and in other ports those who are or may be authorized by Messrs. F. Barreda & Brother.

The ship to find necessary dunnage.

The owners to be liable for all damages arising from side lights and ports.

The ship to be at Callao ready to load in the course of January and February, 1855, or sooner, unforeseen impediments excepted.

Penalty for non-performance of this charter party twelve thousand dollars, which amount is fixed as indemnification of prejudices caused by the party delinquent to the party observant—political or other extraordinary and unforeseen circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers, and

navigation of whatsoever nature and kind soever during the said voyage always excepted.

The ship to have the benefit of any advance on the guano freight made by the charterers in the United States before she finishes loading at the islands. It is understood the ship is to be laden as deep as prudent without regard to the clause restricting her to one-third above her register tonnage.

B. H. SILSBEE.

Witness to the signature of B. H. Silsbee,
VERNON H. BROWN.

F. L. BARREDA & BROTHER.

Witness to the signature of
J. HOWARD.

Deposition of Matthew Cobb, a witness for the plaintiffs, taken before C. W. Loring, Esq., U. S. Com'r at the City of Boston, 19th March, 1856.

UNITED STATES OF AMERICA,
District of Massachusetts.

On this nineteenth day March, A. D. eighteen hundred and fifty-six, before me, Caleb William Loring, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, under and by virtue of the laws of the United States authorizing the appointment of commissioners for the taking of affidavits and bail, and for other purposes, personally appeared before me, at my office, No. 39 in Court Street, in Boston, in said District of Massachusetts, Matthew Cobb, of Boston, in the said District of Massachusetts, a witness on the part of the plaintiffs in an action on the case pending in the Circuit Court of the United States of the fourth Circuit in and for Maryland District, in which Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George F. Sanders, and William P. Pickman are plaintiffs, and Frederick L. Barreda and Philip Barreda are defendants.

And the said Matthew Cobb, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say, in answer to the following direct interrogatories put by D. Thaxter, att'y for the plaintiffs.

1st interrog'y. State your name, age, residence, and occupation.

Answer. My name is Matthew Cobb. I am sixty-six years. I reside in Boston, and am a merchant.

2d interrogatory. Whether or not, were you in June, 1854, a part owner of the ship Judge Shaw, and was she chartered by the defendants Barreda & Brother? If yea, please produce the charter party and annex the same to your answer hereto. (Objected to.)

Answer. I was part owner of the Judge Shaw in June, 1854. She

was chartered by Barreda & Brothers. This is the charter party. (The charter party is annexed and marked A. (Cobb) C. W. L.)

3d interrogatory. State by whom and where the negotiations, if any, were had in making said charter party. (Objected to.)

Answer. In Boston, with Mr. Vernon Brown I think on the part of Barreda & Brothers, and with me on the part of the ship.

4th interrogatory. State all that passed between you and said Brown in relation to the making of said charter party. (Objected to.)

Answer. The substance of it was he wanted to give me a charter for the ship Judge Shaw. He said he could give me a good charter to go after a load of guano; or he come right to it at once, and said he would give me thirty dollars a ton to go out in ballast and fetch a load of guano from the Chincha Islands. He made me the offer of thirty dollars a ton; he considered it a great charter, and advised me to go. I accepted it. He said he would send and have the charter party made. The charter party came back, and was presented to me. I found it read as it does, twenty-five dollars a ton, and five dollars additional, they to have the privilege of putting on board out not exceeding two hundred tons, and to have the benefit of any freight going out in her. I think those are the words. I asked him why it was written so, why it did not come to the point at once, and say thirty dollars a ton; he said there had been some charters made, where they paid only twenty-five dollars a ton and they didn't wish the charter party should show more than that. I think those were the words, but I cannot recollect exactly, it was so long ago. He observed at the time it was not likely there would be any freight brought in at all, and that I could ballast my ship and be off as soon as I could get ready. There was something said about the number of days she was to lay, by the charter party, but Mr. Brown said that was of no consequence, as it was not likely that there would be any freight, and that I might get ready and be off as soon as I pleased.

5th interrogatory. In the charter party you have produced, are the words part printed and part in writing "that the said vessel shall proceed to Callao from a port in the Indian or Pacific Ocean where she is at present bound." State by whom the words "a port in the Indian or Pacific Ocean" were inserted in the charter party. (Objected to.)

Answer. All that I know about it is, it come to me written in that way. I never saw and don't know who wrote it.

6th interrogatory. State whether or not prior and down to, or about the time of the making said charter party, your ship had been put up for any port in the Indian or Pacific Ocean. (Objected to.)

Answer. She was not to my knowledge.

7th interrogatory. Who was the managing owner of the ship at that time? (Objected to.)

Answer. Myself.

8th interrogatory. Whether or not prior to the handing of said charter party to you with this clause, referred to in 5th interrogatory, on it, by said Brown, had you stated to said Brown, or to the defendants or any agent of theirs, that said vessel had been put up for, or was going to any port in the Indian or Pacific Ocean. (Objected to.)

Answer. I had not.

9th interrogatory. When did you elect to go direct to Chincha? When the charter party was handed to you by said Brown as you have stated? (Objected to.)

Answer. Yes, previous, as soon as I agreed to go, before I got the charter party, to Callao and the Chinchas.

10th interrogatory. When you say in your last answer you elected to go before you got the charter party, state what you mean by that. (Objected to.)

Answer. He said he had to send to get the charter party signed; when I negotiated with him I negotiated for thirty dollars to go in ballast as I before stated.

11th interrogatory. Whether or not was your ship put up for freight for Callao or the Chinchas for the outward voyage? (Objected to.)

Answer. No, I think not. She was not by me.

12th interrogatory. Whether or not did the charterers send any, and what freight by her on the outward voyage? (Objected to.)

Answer. None, to my knowledge.

13th interrogatory. How much guano did your vessel bring home?

Answer. Nine hundred tons, and a few tons over.

14th interrogatory. What freight were you paid for this? (Objected to.)

Answer. Thirty dollars a ton.

15th interrogatory. Prior to the handing of the charter party to you by said Brown, had you any, and what knowledge that the clause referred to in the 5th interrogatory was to be inserted? (Objected to.)

Answer. I had no knowledge of that. The agreement was for a voyage to Chinchas and back.

Cross-examined.

And to the following cross interrogatories put by Joseph M. Bell, attorney for the defendants.

1st cross-interrogatory. Does or not the charter party contain your exact contract?

Answer. Yes, I think it does of course.

2d cross-interrogatory. Was or not your conversation with Mr. Brown predicated upon a direct voyage to Callao?

Answer. Yes, to Callao, and the Islands and back.

3d cross-interrogatory. If your vessel had had a freight secured

to Australia or California, or a full cargo to either of those places, would or not $25 per ton for guano on return voyage, been equivalent to $30 per ton for a direct voyage out and back, with the privilege to the charterers as in said charter. (Objected to.)

Answer. That is according to what I could have got for a frieght out to Australia or California.

4th cross-interrogatory. Did you consider that you had any right to put up said vessel for freight after the charter. (Objected to.)

Answer. I did not.

5th cross-interrogatory. Did you not before signing the charter party, know that you had under it the privilege of electing a round voyage or a direct one?

Answer. I considered I only had a direct one to Callao, the Islands and back.

6th cross-interrogatory. Did you read the charter party before signing it?

Answer. I did.

MATTHEW COBB.

UNITED STATES OF AMERICA,
District of Massachusetts.

I, Caleb William Loring, a commissioner appointed by the Circuit Court of the United States, for the District of Massachusetts, in the first circuit, under and by virtue of the laws of the United States, authorizing the appointment of commissioners for the purpose of taking affidavits and bail, and other purposes, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the said Cobb is a material and necessary witness in the cause in the caption of the said deposition named, and that he lives in Boston, in said Massachusetts, and more than one hundred miles, and the place of taking the deposition is more than one hundred miles from the place of trial of said cause.

And I do further certify, that the said plaintiffs were present during the examination of said witness by the attorney, David Thaxter, and that notice of the taking of said deposition was served on the defendants' attorney in the city of Baltimore, as will appear by the notice annexed to Nicholas T. Snell's deposition herewith returned, and that the defendants appeared and were present during the taking of said deposition by their attorney, Joseph M. Bell.

And I further certify, that no further notification of the time and place of taking the said deposition signed by me, was made out and served on the defendants or their attorney or agent, to be present at the taking of the deposition, or to put interrogatories, if he or they might think fit, because no one of them, except said Bell, is within one hundred miles of the city of Boston, where this deposition is taken, and the said Bell was not known to be the agent or the attorney of the defendants, until his said appearance at the taking of said deposition aforesaid.

I do further certify, that on the nineteenth day of March, in the year eighteen hundred and fifty-six, the time for the taking of this deposition, being by consent of said Bell and Thaxter, from the seventeenth day of March, in the said notice mentioned, I was attended by the said Cobb, the said witness, who is of sound mind, and lawful age, and the said Cobb having been by me first carefully examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and in the cause aforesaid, did answer to the interrogatories and cross-interrogatories put to him, and the testimony given by him was by me reduced to writing in his presence, and thereafterwards subscribed by him as and for his deposition in my presence. I have retained the said deposition in my possession, for the purpose of sealing the same, and depositing it in the post-office in said Boston, the same with my own hand directed to the Circuit Court of the fourth district, in and for Maryland district.

And I do further certify, that I am not of counsel or attorney for either of the parties on the said deposition and caption named, nor in any way interested in the event or the cause named in the said caption.

In testimony whereof I have hereunto put my hand and seal this thirty-first day of March, A. D. 1856.

C. W. LORING,
U. S. Com. Dis. of Mass'ts.

A. (COBB), C. W. L.

Charter Party. Ship Judge Shaw.

Charter Party. BOSTON, *June* 13th, 1854.

It is hereby mutually agreed between Matthew Cobb, owner of the ship Judge Shaw, six hundred and ninety tons register measurement, now at Boston, on the one part, and F. Barreda & Brother, acting as agents for the Peruvian Government, on the other part, as follows: That the said vessel shall proceed to Callao, from a port in the Indian or Pacific Ocean, where she is at present bound, and being tight, staunch, and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands, to take in her cargo.

After completing her loading of guano, the vessel to proceed direct to her destination.

A full cargo of guano not to exceed one-third above the register tonnage (unless otherwise agreed) to be furnished to the ship.

At the Chincha Islands, the vessel to be placed under the Mangueras, to load, or, at the option of the charterers, the cargo to be placed in the ship's, or charterer's boats, and in them conveyed on board, at ship's expense and shipper's risk.

Sixty-five running days to be allowed to the charterers for loading the ship at the Chincha Islands, to commence from the day the master

gives notice, in writing, of being ready to receive and take on board, and to cease when the charterer's agents give notice that she is to receive no more cargo; to be paid for at the rate of eighty-five dollars per day, from the party delinquent to the party observant.

The ship shall convey any specie that may be required for the payment of cargo, and any tools and bags for dunnage, free of freight, and must deliver, free of charge, either on board or alongside, any water that may be required at the guano ports, not exceeding five tons.

The crew to sew up the mouths of the sacks, if required, free of expense, the charterers providing the twine; the sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborer's daily pay while so employed.

The owners of the vessel to pay all port charges.

The said vessel shall, after completing her loading, as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barreda & Brother, from Baltimore, or their agents, to discharge in any safe port of sea or river in the United States, not south of Hampton Roads or north of Cape Ann, and there, according to bills of lading, deliver her cargo, which is to be taken from alongside, as fast as the custom of the port to which she may be ordered will permit: the consignee having the liberty of naming the dock or wharf at which the cargo is to be landed.

The freight to be paid as under, at the rate of ($25) say twenty-five dollars in full per ton, of 20 cwt. net of guano, custom-house weights. In calculating the freight, the proper per centage of water on all that turns out damaged is to be deducted.

The master, if required, to be supplied, at Callao, with a sum not exceeding five thousand dollars, which, together with ten per cent. premium on the same, and the cost of insurance on said premium, and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners. And should the charterers or their agents think fit to advance any further sum on the credit of the freight, for repairs, stores, and disbursements, such sums, with premium, interest, commission, and insurance, to be considered in part payment of freight to the master, the captain's receipt for which is to be binding on the owners; a part of the freight, not exceeding one-third, at the option of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo, by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignee; the captain to grant a receipt in triplicate for the amount of freight, when settled, stating also the number of tons of guano delivered.

The captain to sign bills of lading without reference to rate of freight, and without prejudice to this charter party.

The ship to be consigned to F. Barreda & Brother, or their agents at Callao, and at the ports of discharge, who will charge, in the first place, one hundred and fifty dollars, and in the second, five per cent. on the freight, for managing the ship's business. And if, for any unforeseen event, the vessel should proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of F. Barreda & Brother (paying usual commissions), who shall perform all the business belonging to the ship.

Said agents are, at St. Thomas, Messrs. Pretto and Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso, or ports of Chili, Jose Cervero, Esq., or his agents; and in the other ports, those who are or may be authorized by Messrs. Barreda & Brother.

The ship to find necessary dunnage.

The owners to be liable for all damages arising from side lights and ports.

The ship to be at Callao ready to load in the course of January, 1855, or before, under the penalty hereafter mentioned.

Penalty for non-performance of this charter party eight thousand dollars, which amount is fixed as indemnification of prejudices caused by the party delinquent to the party observant: political or other extraordinary and unforeseen circumstances, the act of God, enemies, fires, and all and every other dangers of the seas, rivers, and navigation, of whatsoever nature and kind soever, during the said voyage, always excepted.

It is further agreed that, within one week from the date hereof, the owners of said vessel may, if they see fit, elect to dispatch her direct to Callao and the Chincha Islands to load as hereinbefore provided, and, in case said owners shall so elect, the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her such outward cargo, not exceeding two hundred tons, as they may desire, provided they shall do so within ten days after the owners shall have announced their said election. The charterers, on the arrival of the vessel at the home port, to pay in full satisfaction of such earnings and privilege and of all outward freight such gross sum as shall be equivalent to five dollars per ton on the return cargo delivered.

MATTHEW COBB.

Witness, V. H. BROWN.

F. BARREDA & BROTHER.

Witness, J. HOWARD.

It is also understood this ship is to have the privilege of loading as deep as prudent without regard to the clause restricting her to one-third over her register tonnage.

Deposition of Elias E. Davison, witness for the plaintiff, taken before C. W. Loring, Esq., U. S. Com. at Boston, on the 18th day of March, 1856.

UNITED STATES OF AMERICA,
District of Massachusetts:

On this eighteenth day of March, A. D. eighteen hundred and fifty-six, before me, Caleb William Loring, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, under and by virtue of the laws of the United States, authorizing the appointment of commissioners for the taking of affidavits and bail, and for other purposes, personally appeared before me at my office, No. 39, in Court Street, Boston, in said District of Massachusetts, Elias E. Davison, of Boston, in the said District of Massachusetts, a witness on the part of the plaintiffs in an action in the case, pending in the Circuit Court of the United States for the Fourth Circuit in and for Maryland District, in which Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George F. Sanders and William D. Pickman are plaintiffs, and Frederick L. Barreda and Philip Barreda are defendants.

And the said Elias E. Davison being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say in answer to the following direct interrogatories put by D. Thaxter, attorney for the plaintiffs.

1st interrog'y. State your name, age, residence, and occupation.

Answer. Elias E. Davison; I am fifty-one; I reside in Boston; I have charge of Lewis' wharf, and am interested in vessels.

2d interrog'y. Whether or not were you in July, 1854, a part owner of the ship Peerless, and was she chartered by the defendants, Barreda & Brother? and if yes, please produce the charter party, and annex the same to your answer hereto. (Objected to.)

Answer. I was part owner of the ship Peerless and agent. She was chartered by Barreda & Brothers, and this is the charter party. (The charter party is marked *A* (Davison), C. W. L., and annexed by the commissioner.)

3d Interrog'y. State by whom, and where the negotiations, if any, were had, in making said charter party.

Answer. They were made by Vernon Brown & Sons in Boston on the part of Barreda & Brother, myself as agent and part owner on account of the ship.

4th interrog'y. State all that passed between you and said Brown in relation to the making of said charter party. (Objected to.)

Answer. Nesmith & Co. offered me a thirty dollars charter, and I told them I would rather go to my friend Brown. Brown told me he would give me a thirty dollar charter to go to the Chinchas by the way of Callao. The ship was then at Philadelphia, or was to be there shortly. I don't recollect of having heard anything of twenty-

five or five. This was prior to the charter party's being made out; on receiving the charter party the result was the same thing to me, and I don't recollect of anything being said on this subject.

5th interrog'y. Whether or not was the conversation which you have stated in your last answer the last conversation had by you with Brown upon this subject before he handed you the charter? (Objected to.)

Answer. I think so. The charter is handed for signature before they go on to Barreda & Brother to be confirmed.

6th interrog'y. In the charter party you have produced are the words part printed and part in writing, "that the said vessel shall proceed to Callao from a port in the Indian or Pacific Ocean, where she is at present bound?" State by whom the words "a port in the Indian or Pacific Ocean" were inserted in the charter party. (Objected to.)

Answer. That is by Mr. Brown or his clerk.

7th interrogatory. State whether or not, prior and down to or at the time of the making said charter party, your ship had been put up for any port in the Indian or Pacific Ocean. (Objected to.)

Answer. She had not. She was discharging guano, or to be discharging guano from there.

8th interrogatory. Whether or not, prior to the handing of said charter party to you with this clause in it by said Brown, had you stated to said Brown, or to the defendants, or any agents of theirs, that said vessel had been put up for or was going to any port in the Indian or Pacific Ocean. (Objected to.)

Answer. No allusion to it whatever.

9th interrogatory. Whether or not, in any conversation had by you with said Brown in relation to making a charter party for this ship, anything, and what was said about the ship's going in any other way than direct to Callao and the Chinchas, and bringing a cargo back for $30. (Objected to.)

Answer. No sir, nothing.

Interrogatory 10. How did your ship go to Callao, in ballast or otherwise?

Answer. In ballast.

11th interrogatory. When did you make your election to have her thus proceed? When the charter was made?

Answer. Yes, sir.

12th interrogatory. Whether or not your ship was put up for freight for Callao or the Chinchas for the outward voyage.

Answer. She was not.

13th interrogatory. Whether or not did the charterers send any, and what freight?

Answer. None.

14th interrogatory. How much guano did your vessel bring home?

Answer. Nine hundred and ninety-four tons.

15th interrogatory. How were you paid for this? and if you have the account of settlement, please produce it. (Objected to.)

Answer. I have freight on nine hundred and ninety tons, two hundred and two quarters, that was $29,703 77. Compensation and use of vessel at five dollars a ton, $4,950 63, in the $29,703 77. I produce a copy of the settlement. The copy is annexed by agreement of counsel instead of the original, and marked by the magistrate *B* (C. W. L).

16th interrogatory. Prior to the handing of the charter party to you by said Brown, had you any and what knowledge that the clause referred to in the 6th interrogatory was to be inserted? (Objected to.)

Answer. I didn't know anything about it. I didn't care anything about it.

Cross-examined.

And to the following cross-interrogatories, put by Joseph M. Bell, attorney for the defendants :—

1st cross-interrogatory. Does or not the charter party correctly express your contract?

Answer. Certainly.

2d cross-interrogatory. If you had a cargo for Australia or California on a freight, would not $25 be as high a rate as $30 for a direct voyage having no right of cargo or freight on your part? (Objected to.)

Answer. It would depend on the time it would take, and the amount of the freight.

3d cross-interrogatory. What amount of freight would compensate. (Objected to.)

Answer. I would rather have five thousand dollars direct to Callao and back, than fifteen thousand to California or Australia, and then go to Callao.

4th cross-interrogatory. If you then had been interested in trade to California or Australia, which should you have preferred? (Objected to.)

Answer. I should have preferred the Chinchas direct, the figures, I think, will show it.

ELIAS E. DAVISON.

UNITED OF AMERICA,
District of Massachusetts.

I, Caleb William Loring, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts in the First Circuit, under and by virtue of the laws of the United States, authorizing the appointment of commissioners for the taking of affidavits and bail, and other purposes, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the said Davison is a material and necessary witness in the cause in the

caption of the said deposition named, and that he lives in Boston, in said Massachusetts, and more than one hundred miles, and the place of taking the deposition is more than one hundred miles from the place of trial of said cause.

I further certify that the said plaintiffs were present during the examination of said witness by their attorney, David Thaxter, and that notice of the taking of said deposition was served on the defendants' attorneys in the city of Baltimore, as will appear by the notice annexed to Nicholas T. Snell's deposition returned herewith, and that the defendants appeared, and were present during the taking of said deposition by their attorney Joseph M. Bell.

And I further certify that no further notification of the time and place of taking the said deposition signed by me was made out and served on the defendants, or their attorney or agent, to be present at the taking of the deposition, and to put interrogatories if he or they might think proper, because no one of them except said Bell is within one hundred miles of the city of Boston, where this deposition is taken, and the said Bell was not known to be the agent or the attorney of the defendants until his said appearance at the taking of said deposition aforesaid.

I further certify that on the eighteenth day of March, in the year eighteen hundred and fifty-six, the time for the taking of this deposition being postponed to this day by consent of said Bell and Thaxter, from the seventeenth day of March in said notice mentioned, I was attended by said Davison, the said witness, who is of sound mind and lawful age, and the said Davison having been by me first carefully examined, and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and in the cause aforesaid did answer to the interrogatories and cross-interrogatories put to him, and the testimony given by him was by me reduced to writing in his presence, and thereafterwards subscribed by him as and for his deposition in my presence. I have retained the said deposition in my possession for the purpose of sealing the same and depositing it in the post-office in said Boston, the same with my own hand directed to the said Circuit Court for the Fourth Circuit in and for Maryland District.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto put my hand and seal this thirty-first day of March, A. D. 1856.

[SEAL.] C. W. LORING,

U. S. Com. Dist. of Massachusetts.

A. DAVISON, C. W. L. Ship Peerless.

Charter Party.

Charter Party. BOSTON, *5th July*, 1854.

It is hereby mutually agreed between E. E. Davison, owner of the ship Peerless, six hundred and thirty tons register measurement, now at Philadelphia, on the one part, and F. Barreda & Brother, acting as agents for the Peruvian Government, on the other part, as follows:—

That the said vessel shall proceed to Callao from a port in the Indian or Pacific Ocean, where she is at present bound; and being tight, staunch, and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands to take in her cargo. After completing loading of guano, the vessel to proceed direct to her destination.

A full cargo of guano, not exceeding one-third above the register tonnage (unless otherwise agreed), to be furnished to the ship.

At the Chincha Islands the vessel to be placed under the Magueras to load, or, at the option of the charterers, the cargo to be placed in the ship's or charterers' boats, and in them conveyed on board, at ship's expense and shipper's risk.

Sixty-six running days to be allowed to the charterers for loading the ship at the Chincha Islands, to commence from the day the master gives notice in writing of being ready to receive and take on board, and to cease when the charterers' agents shall give notice that she is to receive no more cargo, to be paid for at the rate of eighty-five dollars per day from the party delinquent to the party observant.

The ship shall convey any specie that may be required for the payment of cargo, and any tools and bags for dunnage, free of freight; and must deliver free of charge either on board or alongside any water that may be required at the guano ports, not exceeding four tons.

The crew to sew up the mouths of the sacks if required, free of expense, the charterers providing twine; the sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborers' daily pay while so employed.

The owners of the vessel to pay all port charges.

The said vessel shall, after completing her loading as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barreda & Brother, from Baltimore, or their agents, to discharge in any safe port of sea or river in the United States, not south of Hampton Roads or north of Cape Ann; and there, according to bills of lading, deliver her cargo,

which is to be discharged and taken from alongside, as fast as the custom of the port to which she may be ordered will permit; the consignee having the liberty of naming the dock or wharf at which the cargo is to be landed.

The freight to be paid as under, at the rate of ($25) twenty-five dollars in full, per ton, of 20 cwt. net of guano, custom-house weights. In calculating the freight, the proper percentage of water on all that turns out damaged is to be deducted.

The master, if required, to be supplied at Callao with a sum not exceeding six thousand dollars, which, together with ten per cent. premium on the same, and the cost of insurance on said premium and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners. And should the charterers or their agents think fit to advance any further sum on the credit of the freight for repairs, stores, and disbursements, such sums, with the premium, interest, commission, and insurance, to be considered in part payment of freight to the master, the captain's receipt for which is to be binding on the owners; a part of the freight not exceeding one-third, at the option of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignee; the captain to grant a receipt in *in* triplicate for the amount of freight when settled, stating also the number of tons of guano delivered. The captain to sign bills of lading without reference to rate of freight, and without prejudice to this charter party.

The ship to be consigned to F. Barreda & Brother, or their agents, at Callao, and at the ports of discharge, who will charge in the first place, one hundred and fifty dollars, and in the second, five per cent., on the freight for managing the ship's business. And if for any unforeseen event, the vessel should proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of F. Barreda & Brother (paying usual commissions), who shall perform all the business belonging to the ship. Said agents are, at St. Thomas, Messrs. Pretto & Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso, or ports of Chili, Jose Cerveró, Esq., or his agents, and in other ports, those who are, or may be authorized by Messrs. F. Barreda & Brother.

The ship to find necessary dunnage.

The owners to be liable for all damages arising from side lights and ports.

The ship to be at Callao, ready to load, in the course of January, 1855, or before, under penalty hereafter mentioned.

Penalty for non-performance of this charter party ten thousand dollars, which amount is fixed as indemnification of prejudices caused by the party delinquent to the party observant: political or other

extraordinary and unforeseen circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers, and navigation, of whatever nature and kind soever, during the said voyage always excepted.

"It is further agreed that within one week from the date hereof, the owners of said vessel may, if they see fit, elect to dispatch her direct to Callao and the Chincha Islands, to load as hereinbefore provided; and in case said owners shall so elect, the charterers shall be entitled to all her earnings on such outward voyage, and shall further have the privilege of shipping by her such outward cargo, not exceeding two hundred tons, as they may desire; provided they shall do so within ten days after the owners shall have announced their said election. The charterers, on the arrival of the vessel at the home port, to pay in full satisfaction of such earnings and privilege, and of all outward freight, such gross sum as shall be equivalent to five dollars per ton on the return cargo delivered."

"It is hereby agreed and understood that this ship when loaded with guano shall draw under 20 feet of water and no more, under the penalty hereinbefore mentioned.

ELIAS E. DAVISON,
Ag't and part Owner.

Witness to the signature of E. E. Davis,
JOS. L. GIFFORD.

Pp. F. BARREDA & BRO.
W. BARRIL.

Witness to the signature,
J. HOWARD.

BOSTON, *July* 6, 1854.

The owners of above vessel have elected to dispatch her direct from Philadelphia for Callao and Chincha Islands in ballast.

VERNON, BROWN & SON,
Brokers.

Copy Account B. (*C. W. L.*)

Ship Peerless and Owners in acct. with Theodore W. Riley, Agent for Messrs. F. Barreda & Brothers.

1855.

May 5.	By freight on 990. 2. 2. 1. tons of guano del'd this day as per charter party, at $25 per ton,	$24,753 14	
	Compensation for use of vessel outward, at $5 per ton,	4,950 63	
			$29,703 77

Ap'l 28.	Advanced in Norfolk by Hardy & Bro's	113 03	
May 14.	" Boston, C. L. Bartlett,	3,000 00	
	Portion of expenses landing cargo by owners of ship, 2 mos. interest on $3,113 03 @ 7 per ct.	36 32	
	Commissions on $29,703 44 @ 5 per ct.	1,485 19	
	Balance due 2 mos. from 25 May,	25,069 23	
			$29,703 77

E. & O. E. New York, 28 May, 1855.

(Signed) T. W. RILEY,
by C. L. BARTLETT,
Ag't.

June 1st, 1855.

Deposition of Amherst A. Frazer, witness for the Plaintiffs, taken before C. W. Loring, Esq., U. S. Com'r, at Boston, 24 March, 1856.

UNITED STATES OF AMERICA,
District of Massachusetts.

On this twenty-fourth day of March, A. D. eighteen hundred and fifty-six, before me, Caleb William Loring, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, under and by virtue of the laws of the United States authorizing the appointment of commissioners for the taking of affidavits and bail and for other purposes, personally appeared before me at my office, No. 39 Court Street, Boston, in said Massachusetts, Amherst A. Frazer, of Boston, in the said District of Massachusetts, a witness on the part of the plaintiffs in an action on the case pending in the Circuit Court of the United States for the Fourth Circuit in and for Maryland District, in which Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George F. Sanders and William D. Pickman are plaintiffs, and Frederick L. Barreda and Philip Barreda are defendants.

And the said Amherst A. Frazer being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say, in answer to the following direct interrogatories put by D. Thaxter, attorney for the plaintiffs—

1st Interrog'y. State your name, age, residence and occupation.

Answer. My name is Amherst A. Frazer; I am forty-five years old; I reside in Boston; I am in the broker's and shipping business.

2d Interrog'y. What was your business in 1854, and how long had you been engaged in that business?

Answer. I was in the shipping and broker's business, and have been so from 1828.

3d Interrog'y. Whether or not your business was such that you were conversant with the rates of freight for vessels in the year 1854.

Answer. Yes, sir.

4th Interrog'y. State whether or not there was any and what difference in the rates of freights in June and July of the year 1854 from the rates in April of that year, at which vessels could be chartered here to bring cargoes from the Indian and Pacific Oceans, and also guano from the Chinchas. (Objected to.)

Answer. From running over my book as a general report, in March and April, I make it about sixteen dollars from Calcutta, and about seventeen dollars a ton from China in June and July. They arose considerable and were from twenty-two to twenty-five and six dollars from China, and some ports in China as high as thirty. As to guano, I don't know except from hearsay. In June and July people said that they could get thirty dollars a ton. When I was freighting ships for other places people said that they could get thirty dollars a ton for guano; this was said every day. (The latter part of the answer in reference to the guano freights is objected to as hearsay.)

5th Interrog'y. How, if at all, does the weight or measurement of a Calcutta or a China cargo differ from that of a guano cargo? (Objected to.)

Answer. Guano freight is a ton in weight: a Calcutta freight is usually measurement. Some articles are taken by weight, but they form a small portion of the cargoes. A China freight is taken by measurement, all the cargo. A vessel that carries a thousand tons of guano will generally carry fifteen hundred tons of measurement goods. Fifty per cent. more for a measurement freight is the general rule; but ships vary a little from that.

Cross-examined.

And to the following cross-interrogatories, put by Joseph M. Bell, attorney for the defendants—

1st Cross-Interrogatory. Did you understand that any one in June, 1854, was to get more than $25 per ton for freight of guano, and was there not a freight paid for outward voyage, or how otherwise? (Objected to.)

Answer. I never heard of any freight for an outward voyage; but I think it was in June that I heard of thirty dollars a ton, though I could not tell exactly without my books. I can't say whether it was in June or July, but about that time people freely said that they had that offered to go out and get a freight of guano.

2d Cross-Interrog'y. Did you ever see one of the thirty dollar charters, so called, for guano?

Answer. I don't recollect that I did. I know that people frequently came in and asked me to read over their charters, to see if there was any objection to them, but I cannot say that I ever read any. I think I remember reading charter-parties that contained

twenty-five dollars a ton, with the right of more if there was any rise given to other vessels before they loaded.

3d Cross-Interrog'y. If you had been, in 1854, engaged in Australia trade, as the plaintiffs were, which would you prefer, an indirect charter with freight or cargo yours on voyage out, and $25 per ton return freight, or a voyage direct to Chinchas with $5 for direct voyage freight to the charterers and $25 for return? (Objected to.)

Answer. It would depend upon the sum I could get out to Australia.

4th cross-interrogatory. What were the freights to Australia in the spring and summer of 1854? (Objected to.)

Answer. That I cannot tell without having a little time to look into, but I think freights there, were then dull. I will send a note stating how it is, to the commissioner. (It is agreed between the parties that the note shall be annexed as a part of the answer to this interrogatory.)

A. A. FRAZER.

UNITED STATES OF AMERICA,
District of Massachusetts:

I, Caleb William Loring, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, in the First Circuit, under and by virtue of the laws of the United States authorizing the appointment of commissioners for the taking of affidavits, bail, and other purposes, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the said Frazer is a material and necessary witness in the cause in the caption of the said deposition named, and that he lives in Boston in said Massachusetts, and more than one hundred miles, and the place of taking the deposition is more than one hundred miles from the place of trial of said cause.

I do further certify that the said plaintiffs were present during the examination of said witness by their attorney, David Thaxter, and that notice of the taking of said deposition was served on the defendants' attorneys in the city of Baltimore, as will appear by the notice annexed to Nicholas T. Snell's deposition, returned herewith, and that the defendants appeared and were present during the taking of said deposition, by their attorney, Joseph M. Bell.

And I do further certify that no further notification of the time and place of taking the said deposition signed by me was made out and served on the defendants, or their attorney or agent, to be present at the taking of the deposition, and to put interrogatories if he or they might think fit, because no one of them, except said Bell, is within one hundred miles of the city of Boston where this deposition is taken, and the said Bell was not known to be the agent or the attorney of the defendants, until his said appearance at the taking of said deposition aforesaid.

I further certify that, on this twenty-fourth day of March in the year eighteen hundred and fifty-six, the time for the taking of this deposition being postponed to this day by consent of said Bell and Thaxter from the seventeenth day of March in said notice mentioned, I was attended by said Frazer the said witness, who is of sound mind and lawful age; and the said Frazer having been by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and in the cause aforesaid, did answer to the interrogatories and cross-interrogatories put to him, and the testimony given by him was by me reduced to writing in his presence, and there afterwards subscribed by him, as and for his deposition in my presence. I have retained the said deposition in my possession for the purpose of sealing the same and depositing it in the post office in said Boston, the same with my own hand directed to the said Circuit Court of the Fourth District in and for Maryland District. And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto put my hand and seal this thirty-first day of March, A. D. 1856.

C. W. LORING,
U. S. Com. for the Dist. of Massachusetts.

Note referred to in the foregoing Deposition.

C. W. LORING, ESQ:

Dear sir: In further answer to the fourth cross-interrogatory, I would say that freights were extremely dull and depressed in April, May, June, and July of 1854. This was my impression when giving my testimony; but I wished to examine my books before answering definitely. The rates of freights were merely nominal.

Resp'y y'rs,

A. A. FRAZER.

BOSTON, March 25, 1856.

The above is the note sent by the witness Frazer agreeably to his declaration in his answer to the fourth interrogatory, and which is annexed as a part of his answer by agreement of parties.

C. W. LORING,
Com'r.

Deposition of Barnabas Thacher, witness for the plaintiffs, taken before C. W. Loring, Esq., U. S. Com'r for District of Massachusetts at the city of Boston, 25th day of March, 1856.

On this 25 day of March, A. D. eighteen hundred and fifty-six, before me, Caleb W. Loring, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts,

under and by virtue of the laws of the United States, authorizing the appointment of commissioners for the taking of affidavits and bail, and for other purposes in said District of Massachusetts, Barnabas Thacher, of East Bridgewater, in the said District of Massachusetts, a witness on the part of the plaintiffs, in an action on the case pending in the Circuit Court of the United States for the Fourth Circuit in and for Maryland District, in which Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George F. Sanders, and William D. Pickman are plaintiffs, and Frederick L. Barreda and Philip Barreda are defendants. And the said Barnabas Thacher, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say in answer to the following direct interrogatories put by D. Thaxter, attorney for the plaintiffs.

1st interrogatory. State your age, name, residence, and occupation.

Answer. My name is Barnabas Thacher; my age is fifty-five; I reside in East Bridgewater, in this State; I am a merchant.

2d interrogatory. Whether or not in June, 1854, you were a part owner of the ship Oxenbridge, and was she chartered to the defendants, Barreda & Brothers? if yea, please produce and annex the charter party to your deposition. (Objected to.)

Answer. I was then part owner of her, and this is the charter party (the charter is marked *A*. (Thacher) C. W. L. by the commissioner, and is annexed to this deposition.)

3d interrogatory. State how your vessel proceeded to Callao and the Chinchas under said charter party, direct and in ballast, or how otherwise. (Objected to.)

Answer. I shall have to refer to the charter party, my recollection is so indistinct. She went direct from New York; whether she took in freight there or not, I do not know; she did not take any in to my knowledge.

4th interrogatory. Whether, or not, was said ship put up for freight for said outward voyage to Callao and the Chinchas, to your knowledge? (Objected to.)

Answer. Not to my knowledge.

5th interrogatory. Whether, or not, did the defendants offer you any, and what cargo to be carried on said outward voyage? (Objected to.)

Answer. The ship being in New York it is impossible for me to say whether any freight was offered or not. They had the right by the charter party to send it.

6th interrogatory. Between whom was said charter party negotiated? (Objected to.)

Answer. Mr. Brown, on part of Barreda & Bros., and myself on part of Thacher & Co., who acted for the ship.

7th interrogatory. How much guano did your vessel bring home under this charter? (Objected to.)

Answer. I think about nine hundred and fifty tons.

Cross-examined.

And to the following cross-interrogatories put by Joseph M. Bell, Attorney for the defendants.

1st cross-interrogatory. Does not this charter party give you the right to elect an indirect, or direct voyage, and if yea, did you elect ? (Objected.)

Answer. I should think it gave us the right to elect by the reading of it. We did elect a direct voyage. In making this answer, I refer to the charter party, as I have no recollection ; I recollect that when the charter party was produced, it was agreeable to our previour conversation with Mr. Brown.

2d cross-interrogatory. Was not the $5 paid you for going out direct, and privilege of outward cargo or freight to charterers ? (Objected to.)

Answer. I am not certain that anything was said as to the five dollars ; the rate was fixed at twenty-five dollars, with privilege of carrying out at five more. In making my calculation in estimating the voyage, I fixed it at thirty for the return voyage.

BARNABAS THACHER.

UNITED STATES OF AMERICA,
District of Massachusetts.

I, Caleb William Loring, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, in the First Circuit under and by virtue of the laws of the United States, authorizing the appointment of commissioners for the taking of affidavits, bail, and other purposes, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the said Thacher is a material and necessary witness in the cause in the caption of the said deposition named, and that he lives in East Bridgewater, in said Massachusetts, and more than one hundred miles, and the place of taking the deposition is more than one hundred miles from the place of trial of said cause.

And I do further certify, that the said plaintiffs were present during the examination of said witness by their attorney, David Thaxter, and that notice of the taking of said deposition was served on the defendants' attorneys in the City of Baltimore, as will appear by the notice annexed to Nicholas T. Snell's deposition returned herewith, and that the defendants appeared and were present during the taking of said deposition by their attorney, Joseph M. Bell.

And I further certify, that no further notification of the time and place of taking the said deposition signed by me was made out and served on the defendants, or their attorney, or agent, to be present at the taking of the deposition, and to put interrogatories if he or they might think fit, because no one of them, except the said Bell, is within one hundred miles of the City of Boston, where the said deposition is taken, and the said Bell was not known to be the agent

or the attorney of the defendants until his said appearance at the taking of said deposition aforesaid.

I certify, that on the twenty-fifth day of March, in the year eighteen hundred and fifty-six, the time for the taking of this deposition being postponed to this day by consent of said Bell and Thaxter, from the seventeenth day of March, in said notice mentioned, I was attended by said Thacher the said witness, who is of sound mind and lawful age, and the said Thacher having been by me first carefully examined, cautioned and sworn, to testify the truth, the whole truth, and nothing but the whole truth, in the cause aforesaid, did answer to the interrogatories and cross-interrogatories put to him, and the testimony given by him was by me reduced to writing in his presence, and there afterwards subscribed by him, as and for his deposition in my presence. I have retained the said deposition in my possession for the purpose of sealing the same, and depositing it in the post office in said Boston, the same with my own hand directed to the said Circuit Court of the Fourth Circuit, in and for Maryland District.

And I do further certify, that I am not of counsel or attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereto put my hand and seal this thirty-first day of March, A. D. 1856.

[SEAL.] C. W. LORING,
U. S. Com'r, Dist. Massa.

Charter Party. A. THACHER, C. W. L., ship Oxenbridge.

Charter Party. BOSTON, *June* 20, 1854.

It is hereby mutually agreed between Thacher & Co., owners of the ship Oxenbridge, five hundred and twenty tons register measurement, now at New York, on the one part, and F. Barreda & Brother, acting as agents for the Peruvian Government, on the other part, as follows:—

That the said vessel shall proceed to Callao, from a port in the Indian or Pacific Ocean, where she is at present bound, and being tight, staunch and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands to take in her cargo.

After completing her loading of guano, the vessel to proceed direct to her destination.

A full cargo of guano, not to exceed one-third above the register tonnage (unless otherwise agreed), to be furnished to the ship.

At Chincha Islands, the vessel to be placed under the Mangueras to load, or, at the option of the charterers, the cargo to be placed in the ship's or charterers' boats, and in them conveyed on board, at ship's expense and shippers' risk.

Fifty-five running days to be allowed to the charterers for loading the ship at the Chincha Islands, to commence from the day the master gives notice in writing, of being ready to receive and take on board, and to leave when the charterers' agents give notice that she is to receive no more cargo; to be paid for at the rate of eighty dollars per day, from the party delinquent to the party observant.

The ship shall convey any specie that may be required for the payment of cargo, and any tools and bags for dunnage, free of freight; and must deliver, free of charge, either on board or alongside, any water that may be required at the guano ports, not exceeding five tons.

The crew to sew up the mouths of the sacks, if required, free of expense, the charterers providing the twine; the sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborers' daily pay while so employed.

The owners of the vessel to pay all port charges. The said vessel shall, after completing her loading as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barreda & Brother, from Baltimore, or their agents, to discharge, in any safe port of sea or river in the United States, not south of Hampton Roads, or north of Cape Ann; and there according to bills of lading, deliver her cargo, which is to be discharged and taken from alongside, as fast as the custom of the port to which she may be ordered will permit; the consignee having the liberty of naming the dock or wharf at which the cargo is to be landed. The freight to be paid as under, at the rate of ($25) say twenty-five dollars, in full, per ton, of 20 cwt. net of guano, custom house weights.

In calculating the freight, the proper percentage of water on all that turns out damaged is to be deducted.

The master, if required, to be supplied at Callao with a sum not exceeding five thousand dollars, which, together with ten per cent. premium on the same, and the cost of the insurance on said premium and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners. And should the charterers or their agents think fit to advance any further sum on the credit of the freight, for repairs, stores and disbursements, such sums, with premium, interest, commission and insurance, to be considered in part payment of the freight to the master, the captain's receipt for which is to be binding on the owners; a part of the freight not exceeding one-third, at the option of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo, by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignee; the captain to grant a receipt in triplicate, for the amount of freight, when settled, stating, also, the number of tons of guano delivered.

The captain to sign bills of lading, without reference to rate of freight, and without prejudice to this Charter Party.

The ship to be consigned to F. Barreda & Brother, or their agents at Callao, and at the ports of discharge, who will charge in the first place, one hundred and fifty dollars, and in the second place, five per cent. on the freight, for managing the ship's business. And if, for any unforeseen event, the vessel should proceed to any port or ports, along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of F. Barreda & Brother (paying usual commissions), who shall perform all the business belonging to the ship.

Said agents are, at St. Thomas, Messrs. Pretto & Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso or ports of Chili, Jose Cerveró, Esq., or his agents; and in other ports, those who are or may be authorized by Messrs. F. Barreda & Brother.

The ship to find necessary dunnage.

The owners to be liable for all damages arising from side lights and ports.

The ship to be at Callao ready to load in the course of January, 1855, or before, under the penalty hereafter mentioned. Penalty for non-performance of this charter party seven thousand dollars, which amount is fixed as indemnification of prejudices caused by the party delinquent to the party observant: political or other extraordinary and unforeseen circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers, and navigation, of whatever nature and kind soever, during the said voyage, always excepted. It is further agreed, that within one week from date the owners of said vessel may, if they see fit, elect to dispatch her direct to Calloa and the Chincha Islands, to load as heretofore provided; and in case said owners shall so elect, the charterers shall be entitled to all her earnings for such outward voyage; and shall further have the privilege of shipping by her such outward cargo, not exceeding two hundred tons, as they may desire, provided they shall do so within ten days after the owners shall have announced their said election.

The charterers, on the arrival of the vessel at the home port, to pay in full satisfaction of such earnings and privilege, and of all outward freight such gross sum as shall be equivalent to five dollars per ton, on the return cargo delivered.

It is also agreed the ship shall be loaded as deep as prudent, without regard to the clause restricting her to one-third over her register measurement.

Pp. F. BARREDA & BROTHER,
W. BAMIL.

Witness, V. H. BROWN.

THACHER & Co.

Witness, B. & B.
J. HOWARD.

Boston, June 27, 1854. The owners of the above ship have elected to send her direct from New York, where she now lies, to Calloa and Chinchas.

V. BROWN & SON.

Deposition of Wm. P. Jones, witness for the Plaintiffs, taken before C. W. Loring, Esq., U. S. Com., District of Massa., on the 18th day of March, 1856.

UNITED STATES OF AMERICA,
District of Massachusetts.

On the eighteenth day of March, A. D. eighteen hundred and fifty-six, before me, Caleb W. Loring, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, under and by virtue of the laws of the United States, authorizing the appointment of commissioners for the taking of affidavits and bail, and for other purposes, personally appeared before me, at my office, No. 39 in Court Street, Boston, in said Massachusetts, William P. Jones, of Portsmouth, in the District of New Hampshire, a witness on the part of the plaintiffs, in an action on the case pending in the Circuit Court of the United States for the Fourth Circuit in and for Maryland District, in which Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George F. Sanders, and William D. Pickman are plaintiffs, and Frederick L. Barreda and P. Barreda are defendants.

And the said William P. Jones, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say, in answer to the following direct interrogatories, put by D. Thaxter, attorney for the plaintiffs.

1st interrogatory. State your name, age, residence and occupation.

Answer. My name is William P. Jones; I am forty-four; I reside at Portsmouth; I am a merchant.

2d interrogatory. Whether or not were you, in June, 1854, a part owner of the ship Emily Farnum; and if yea, state whether she was chartered by the defendants, F. Barreda & Brother, and produce the charter party, and have it annexed to your deposition. (Objected to.)

Answer. I was part owner of the Emily Farnum. She was chartered to Barreda & Brothers then. This is the charter party. (It is mark *A* (Jones) C. W. L., and annexed to the deposition by the commissioner.)

3d interrogatory. Whether or not, previous, and how long previous to the making of said charter party, did you have any and what negotiations in regard to chartering your vessel, with any and what agent of the defendants, at Boston? (Objected to.)

Answer. The only conversation that I had with any party here, was with Mr. Vernon Brown; it was three or four days before the making of the charter party; not over a week. I was at Boston, and had some talk with Mr. Vernon Brown about chartering this ship

with guano. The substance was simply this: Mr. Brown proposed chartering a ship for a voyage with guano, and proposed giving us thirty dollars a ton, and charging certain commissions on the charter. That thirty dollars a ton was for bringing guano from the Chinchas to Hampton Roads for orders.

4th interrogatory. For whom was said Brown acting, or purporting to act? (Objected to.)

Answer. I understood for Barreda & Brothers.

5th interrogatory. What was the result of this negotiation, and what was done by you subsequently in procuring this charter? (Objected to.)

Answer. I failed negotiating with Mr. Brown, and Captain William Parker who was then and is now commander of the ship, proceeded to Baltimore and there chartered the ship to Messrs. Barreda & Brothers.

6th interrogatory. State whether or not your ship brought a cargo of guano in pursuance of said charter party, and if yea, state how much your ship brought.

Answer. She did, and delivered about eighteen hundred tons.

7th interrogatory. State whether or not your ship went direct to Callao from Portsmouth, and whether or not you received in addition to the $25 first referred to in said charter party the additional sum of $5 per ton on the return cargo.

Answer. She did proceed direct from Portsmouth to Callao; and I did receive the additional sum of five dollars a ton.

8th interrogatory. State whether or not your ship was put up for freight for the outward voyage to Callao.

Answer. She was not to my knowledge.

9th interrogatory. Whether or not were you ever applied to by defendants, or any agent of theirs to put her up for freight for said outward voyage?

Answer. I never was.

10th interrogatory. Whether or not, were you ever applied to by the defendants, or any agent of theirs to take out any cargo in her?

Answer. I was not.

11th interrogatory. Who was the managing owner of the ship at that time?

Answer. I was.

12th interrogatory. How did your ship go out from Portsmouth to Callao; in ballast or otherwise?

Answer. In ballast.

13th interrogatory. How long have you lived at Portsmouth, and whether or not there are any, and what shipments ever made from thence to Callao?

Answer. I was born and always lived there. I am not aware that any shipments are ever made from Portsmouth to Callao.

14th interrogatory. In the negotiation that you have testified to

between you and said Brown, was anything, and what said about any apportionment of $30 a ton, so that part of it should be applied for the outward voyage?

Answer. Well, I cannot now recollect that anything was said.

Cross-examined.

And to the following cross-interrogatories put by Joseph M. Bell, attorney for the defendants.

1st cross-interrogatory, *de bene esse.* In what respect did the charter effected by Captain Parker differ from the terms proposed by Mr. Brown, to you?

Answer. That I couldn't now state, I have only a general idea as to the rate. I wouldn't undertake at this late day to say whether there was or was not a difference.

2d cross-interrogatory. Whether or not did your attempted arrangement with Mr. Brown contemplate a direct passage out to the Chinchas, the ship being under the control of the charterers as to the cargo on the voyage out, or how otherwise?

Answer. I had no other idea at the time, than it was a direct voyage out, and the ship was going in ballast.

3d cross-interrogatory. Did you send any cargo by the Emily Farnum? on the voyage?

Answer. None.

4th cross-interrogatory. Did you not understand that you were to receive the $5 extra as compensation for the direct voyage, with the right of charterers to use her on voyage out, and release of right to use her by you?

Answer. If my recollection serves me right we had no conversation with Mr. Brown except for a direct voyage out. Captain Parker negotiated the charter party at Baltimore; he made it, leaving optional with us for a certain number of days stated in the charter party to go direct at thirty dollars a ton, or twenty-five with liberty to use another port.

5th cross-interrogatory. Could you have taken cargo on the voyage out without charterers' consent? (Objected to.)

Answer. I have forgotten how the thing stands now, it was a good while ago, the charter party tells the story.

6th cross-interrogatory. In your judgment was there or not in April or June, '54, a difference of $5 in price of freight for a voyage direct without cargo, and a voyage by way of Australia or California with cargo? (Objected to.)

Answer. I wouldn't undertake now to pass a judgment on that; my action would seem now as if I thought the direct freight the best.

7th cross-interrogatory. If you had been interested in trade to Australia or California, which you should have preferred? (Objected to.)

Answer. If I had the right of doing so I should have preferred loading my ship.

Re-examined in chief.

And to the following additional direct interrogatories put by D. Thaxter, Esq., attorney for the plaintiffs:—

1st additional interrogatory. Whether or not prior to seeing this charter party had you any, and if any, what knowledge that the charter party was to contain the election you have referred to in your answer to the 4th cross-interrogatory, or that it was to run in any other way than for a direct voyage to Chinchas and return cargo of guano at $30? (Objected to.)

Answer. I had no knowledge what the terms of the charter party were to be. Captain Parker, being part owner of the ship, had *carte blanche* to do what he thought best.

2d additional interrogatory, *de bene esse.* Whether or not do you mean to say, in your answer to the 7th cross-interrogatory, that if you had no cargo to carry out you would prefer the $25 to the $30 freight? (Objected to.)

Answer. I should most assuredly prefer the thirty dollars.

3d additional interrogatory, *de bene esse.* State what you mean then by your answer to the 7th cross-interrogatory. Please state fully.

Answer. I mean if I could obtain a good freight, or had a cargo of goods out, I should take the twenty-five dollars a ton; I mean a good freight that would remunerate me for the difference in time.

4th additional interrogatory. State when your ship arrived here and unloaded her cargo of guano.

Answer. I hav'n't it distinctly in mind; I think it was in July, 1855.

WM. P. JONES.

UNITED STATES OF AMERICA,
District of Massachusetts:

I, Caleb William Loring, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts in the First Circuit, under and by virtue of the laws of the United States, authorizing the appointment of commissioners for the taking of affidavits, bail, and other purposes, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the said Jones is a material and necessary witness in the cause in the caption of said deposition named, and that he lives in Portsmouth, New Hampshire, and more than one hundred miles, and the place of taking the deposition is more than one hundred miles from the place of trial of said cause.

I further certify that the said plaintiffs were present during the examination of said witness by their attorney, David Thaxter, and

that notice of the taking of said deposition was served on the defendants' attorneys in the City of Baltimore, as will appear by the notice annexed to Nicholas T. Snell's deposition, returned herewith, and that the defendants appeared and were present during the taking of said deposition by their attorney, Joseph M. Bell.

And I further certify that no further notification of the time and place of taking the said deposition signed by me was made out and served on the defendants, or their attorney, or agent, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, because no one of them, except said Bell, is within one hundred miles of the City of Boston, where this deposition is taken, and the said Bell was not known to be the agent or the attorney of the defendants until his said appearance at the taking of said deposition aforesaid.

I further certify that on the eighteenth day of March, in the year eighteen hundred and fifty-six, the time for the taking of this deposition being postponed to this day, by consent of said Bell and Thaxter, from the seventeenth day of March, in said notice mentioned, I was attended by said Jones, the said witness, who is of sound mind and lawful age; and the said Jones having been by me first carefully examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and in the cause aforesaid, did answer to the interrogatories and cross-interrogatories put to him, and the testimony given by him was by me reduced to writing in his presence, and there afterwards subscribed by him as and for his deposition in my presence. I have retained the said deposition in my possession for the purpose of sealing the same and depositing it in the post office in said Boston; the same with my own hand directed to the said Circuit Court of the Fourth Circuit in and for Maryland District.

And I do further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto put my hand and seal this thirty-first day of March, A. D. 1856.

C. W. LORING,
Com'r U. S. Circ't C't for District of Massa't's.

Charter Party A. (Jones), C. W. L. Ship Emily Farnum.

BALTIMORE, 19*th June*, 1854.

It is hereby mutually agreed between William Parker, part owner, agent and master of the ship Emily Farnum, about 1,100 tons register measurement, now in the port of Portsmouth, New Hampshire, on the one part, and F. Barreda & Brother, acting as agents for the Peruvian Government, on the other part, as follows:—

That the said vessel shall proceed to Callao from where she is at

present bound, and being tight, staunch and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands, to take in her cargo. After completing her loading of guano, the vessel to proceed direct to her destination.

A full cargo of guano to be furnished to the ship.

At the Chincha Islands, the vessel to be placed under the Magueras to load, or at the option of the charterers, the cargo to be placed in the ship's or charterers' boats, and in them conveyed on board, at the ship's expense and shipper's risk.

Eighty-eight running days to be allowed to the charterers to load the ship at the Islands, to commence from the day the master gives notice, in writing, of being ready to receive and take on board, and to cease when the charterers' agents give notice that she is to receive no more cargo; and ten days to be allowed the master for taking in light freight and specie as above specified, with all days on demurrage to be paid for at the rate of one hundred and fifty dollars per day, from the party delinquent to the party observant.

The ship shall convey any specie that may be required for the payment of cargo, and any tools, and bags for dunnage, free of freight; and must deliver, free of charge, either on board or alongside, any water that may be required at the guano ports, not exceeding four tons.

The crew to sew up the mouths of the sacks, if required, free of expense, the charterers providing twine; the sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborers' daily pay, while so employed.

The owners to pay all port charges.

The vessel shall, after completing her loading as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barreda & Brother, from Baltimore, or their agents, to discharge in any safe port in sea or river, not north of Cape Ann or South of Hampton Roads, and there, according to bills of lading, deliver her cargo, which is to be discharged and taken from alongside, as fast as the custom of the port to which she may be ordered will permit; the consignee having the liberty of naming the dock or wharf at which the cargo is to be discharged.

The freight to be paid as under, at the rate of twenty-five dollars in full, per ton, of 20 cwt. net of guano, custom-house weights. In calculating the freight, the proper percentage of water on all that turns out damaged, is to be deducted.

The master, if required, to be supplied in Callao with a sum not exceeding seven thousand dollars, which, together with ten per cent. premium on the same, and cost of insurance on such premium and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners. And should the charterers

or their agents, think fit to advance any further sum on the credit of the freight, for repairs, stores and disbursements, such sums, with premium, interest, commissions and insurance, to be considered in part payment of the freight to the master, the captain's receipt for which is to be binding on the owners. A part of the freight not exceeding one-third, at the option of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo, by approved bills at two months' date, or in cash less the usual discount, at the option of the consignee; the captain to grant a receipt in triplicate for the amount of freight when settled, stating the number of tons of guano delivered.

The captain to sign bills of lading without reference to the rate of freight, and without prejudice to this charter party.

The ship to be consigned to F. Barreda & Brother, or their agents at Callao, and at the port of discharge, who will charge in the first place one hundred and fifty dollars, and in the second place five per cent. on the freight for managing the ship's business. And if, for any unforeseen event, the vessel shall proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of Barreda & Brother (paying the usual commissions), who shall perform all the business belonging to the ship. Said agents are, at St. Thomas', Messrs. Pretto & Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso, or ports of Chili, Jose Cerveró, Esq., or their agents; and in other ports those who are or may be authorized by Messrs. Barreda & Brother.

The ship to find necessary dunnage.

The owners to be liable for all damages arising from side lights and ports.

The ship to be at Callao ready to load in the course of January, 1855, or before, under the penalty hereinafter mentioned.

Penalty for non performance of this charter party twelve thousand dollars, which amount is fixed as indemnification of prejudices caused by the party delinquent to the party observant; political or other extraordinary and unforeseen circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers, and navigation of whatever nature and kind soever, during the said voyage, always excepted.

It is further agreed that within one week from the date hereof the owners of said vessel may, if they see fit, elect to dispatch her direct to Callao and the Chincha Islands and back, as hereinbefore provided. And in case said owners shall so elect, the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her such outward cargo, not exceeding two hundred tons, as they may desire, provided they shall do so within ten days after the owners shall have announced their said election.

The charterers, on the arrival of the vessel at the home port, to pay in full satisfaction of such earnings and privilege, and of all outward freights, such gross sum as shall be equivalent to five dollars per ton on the return cargo delivered.

WILLIAM PARKER,
F. BARREDA & BROTHER.

Witness both parties,
J. HOWARD.

Deposition of Richard Baker, Junior, witness for the plaintiffs, taken before C. W. Loring, Esq., U. S. Com. for the Dist. of Massachusetts, at the City of Boston, on the 25th day of March, 1856.

UNITED STATES AMERICA,
District of Massachusetts.

On this twenty-fifth day of March, A. D. eighteen hundred and fifty-six, before me, Caleb William Loring, a Commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, under and by virtue of the laws of the United States, authorizing the appointment of commissioners for the taking of affidavits and bail, and for other purposes, personally appeared before me at my office, No. 39, in Court Street, Boston, in the said District of Massachusetts, Richard Baker, Junior, of Dorchester, in the said District of Massachusetts, a witness on the part of the plaintiffs in an action on the case pending in the Circuit Court of the United States for the Fourth Circuit in and for Maryland District, in which Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George F. Sanders, and William D. Pickman, are plaintiffs, and Frederick L. Barreda and Philip Barreda are defendants.

And the said Richard Baker, Junior, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say in answer to the following direct interrogatories put by D. Thaxter, attorney for the plaintiffs:—

1st interrogatory. State your name, age, residence, and occupation.

Answer. My name is Richard Baker, Junior. I am thirty-seven years old. I reside at Dorchester. I am a merchant.

2d interrogatory. Whether or not, in July, 1854, you were a part owner of the ship William Sturgis, and was she chartered to the defendants Barreda & Brother? and if yea, please produce and annex the charter party to your deposition. (Objected to.)

Answer. In July, 1854, I was part owner of the William Sturgis. She was chartered to the defendants then. I produce the charter party (which is marked by the commissioner *A* (Baker), C. W. L., and annexed to this deposition).

3d interrogatory. State whether or not you elected to dispatch said

ship direct to Callao and the Chinchas. When was said election made? At the time the charter party was made? (Objected to.)

Answer. Yes, sir.

4th interrogatory. How did the ship go on the outward voyage to Callao and the Chinchas, in ballast or otherwise? (Objected to.)

Answer. In ballast.

5th interrogatory. Whether or not was said ship put up for freight for said outward voyage? (Objected to.)

Answer. Not to my knowledge.

6th interrogatory. Whether or not did the defendants offer you any, and what cargo to be carried on the outward voyage? (Objected to.)

Answer. They offered to me no cargo.

7th interrogatory. In the charter party you have produced, are the words part printed and part in writing, "That the said vessel shall proceed to Callao from a port in the Indian or Pacific Ocean where she is at present bound?" State by whom the words "a port in the Indian or Pacific Ocean" were inserted in the charter party. (Objected to.)

Answer. By the party who drew the charter party. I suppose Mr. Brown drew it, as it was presented to us by him.

8th interrogatory. State whether prior and down to, or at the time of the making said charter party, and its being handed to you, said vessel had been put up for any port in the Indian or Pacific Ocean. (Objected to.)

Answer. She had not been.

9th interrogatory. Between whom was said charter party negotiated? (Objected to.)

Answer. I negotiated the charter on the part of the ship, and Mr. Brown & Son on the part of Barreda & Brother.

10th interrogatory. Whether or not you stated to said Brown or any agent of the defendants, at any time, that you had put up, or intended to put up or send your vessel for any port in the Indian or Pacific Ocean other than to send her direct to Callao? (Objected to.)

Answer. No, sir.

11th interrogatory. How much guano did your vessel bring home under this charter?

Answer. Eleven hundred and thirty tons—about that.

12th interrogatory. How much was paid you for it? (Objected to.)

Answer. We were paid for it according to this charter, twenty-five dollars a ton, and five dollars a ton for going in ballast.

Cross-examined.

And to the following cross-interrogatories, put by Joseph M. Bell, attorney for the defendants.

1st cross-interrogatory. Please look at the charter of ship William Sturgis. Had you a right, according to the conditions of the char-

ter, to ship any cargo or take any freight on your account on the outward voyage, and be entitled to more than $25 per ton for your homeward cargo of guano? (Objected to.)

Answer. I didn't suppose we had.

2d cross-interrogatory. If you were engaged in the Australia trade, and were loading a cargo on your own account for that place, would you not think $25 per ton for a return cargo of guano, *via* Australia, was equivalent to a direct voyage to Chinchas, *via* Callao, and back to the United States at $30 per ton? (Objected to.)

Answer. That would depend entirely upon the freight out; it would depend upon circumstances; if I had a cargo for Australia, I should think twenty-five dollars a ton a good return freight—an excellent one; but it would depend upon circumstances which would be best—it would depend upon the market—it is mere guess work.

Re-examination in chief.

1st additional interrogatory, *de bene esse.* Might it not be a great deal worse? (Objected to.)

Answer. It couldn't be vastly worse. It might be worse.

RICHARD BAKER, JR.

UNITED STATES OF AMERICA,
District of Massachusetts:

I, Caleb William Loring, a Commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, in the first Circuit, under and by virtue of the laws of the United States, authorizing the appointment of Commissioners for the taking of affidavits, bail and other purposes, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the said Baker is a material and necessary witness in the cause in the caption of the said deposition named, and that he lives in Dorchester, in said Massachusetts, and more than one hundred miles, and the place of taking the deposition is more than one hundred miles from the place of trial of said cause.

I do further certify that the said plaintiffs were present during the examination of said witness, by their attorney, David Thaxter, and that notice of the taking of said deposition was served on the defendants' attorneys in the city of Baltimore, as will appear by the notice annexed to Nicholas T. Snell's deposition returned herewith, and that the defendants appeared and were present during the taking of said deposition by their attorney, Joseph M. Bell.

And I do further certify that no further notification of the time and place of taking the said deposition signed by me, was made out and served on the defendants, or their attorney or agent, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, because no one of them, except said Bell, is within one hundred miles of the city of Boston, where this deposition

is taken, and the said Bell was not known to be the agent, or the attorney of the defendants until his said appearance at the taking of said deposition aforesaid.

I further certify that on the twenty-fifth day of March, in the year eighteen hundred and fifty-six, the time for the taking of this deposition being postponed to this day by consent of said Bell and Thaxter from the seventh day of March in said notice mentioned, I was attended by said Baker, the said witness, who is of sound mind and lawful age; and the said Baker having been by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and in the cause aforesaid did answer to the interrogatories and cross-interrogatories put to him, and the testimony given by him was by me reduced to writing in his presence, and there afterwards subscribed by him as and for his deposition in my presence. I have retained the said deposition in my possession for the purpose of sealing the same and depositing it in the post office in said Boston, the same with my own hand directed to the said Circuit Court of the fourth Circuit in and for Maryland District.

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto put my *my* hand and seal, this thirty-first day of March, A. D. 1856.

[SEAL.] C. W. LORING,
U. S. Com'r Dist. of Massachusetts.

Charter Party A. (Baker) C. W. L., Ship Wm. Sturgis.

Charter Party. BOSTON, *July* 5, 1854.

It is hereby mutually agreed between Wm. F. Weld & Co., owners of the ship William Sturgis, six hundred and fifty tons, register measurement, now at Boston, on the one part, and F. Barreda & Brother, acting as agents for the Peruvian Government, on the other part, as follows:—

That the said vessel shall proceed to Callao, from a port in the Indian or Pacific Ocean, where she is at present bound, and, being tight, staunch, and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands to take in her cargo.

After completing her loading of guano, the vessel to proceed direct to her destination.

A full cargo of guano, not to exceed one-third above the register tonnage (unless otherwise agreed), to be furnished to the ship.

At the Chincha Island the vessel to be placed under the man-

gueras to load, or, at the option of the charterers, the cargo to be placed in the ship's or charterers' boats, and in them conveyed on board, at the ship's expense and shipper's risk.

Sixty-six running days to be allowed to the charterers for loading the ship at the Chincha Islands, to commence from the day the master gives notice in writing of being ready to receive and take on board, and to cease when the charterers' agents shall give notice that she is to receive no more cargo; to be paid for at the rate of ninety dollars per day from the party delinquent to the party observant.

The ship shall convey any specie that may be required for the payment of cargo, and any tools, and bags for dunnage, free of freight; and must deliver, free of charge, either on board or alongside any water that may be required at the guano ports, not exceeding five tons.

The crew to sew up the mouths of the sacks, if required, free of expense, the charterers providing twine. The sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborers' daily pay while so employed.

The owners of the vessel to pay all port charges.

The said vessel shall, after completing her loading as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barreda & Brother, from Baltimore, or their agents, to discharge in any safe port of sea or river in the United States not south of Hampton Roads or north of Cape Ann, and there, according to bills of lading, deliver her cargo, which is to be discharged and taken from alongside as fast as the custom of the port to which she may be ordered will permit, the consignee to have the liberty of naming the dock or wharf at which the cargo is to be landed.

The freight to be paid as under at the rate of $25, say twenty-five dollars in full, per ton of 20 cwt. net of guano, custom-house weights. In calculating the freight, the proper per centage of water on all that turns out damaged is to be deducted.

The master, if required, to be supplied at Callao with a sum not exceeding five thousand dollars, which, together with ten per cent. premium on the same and the cost of insurance on said premium and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners. And should the charterers or their agents think fit to advance any further sum on the credit of the freight for repairs, stores, and disbursements, such sums, with premium, interest, commission and insurance, to be considered in part payment of the freight to the master, the captain's receipt for which is to be binding on the owners; a part of freight

not exceeding one-third, at the option of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo, by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignee; the captain to grant a receipt in triplicate for the amount of freight, when settled, stating also the number of tons of guano delivered.

The captain to sign bills of lading without reference to rate of freight, and without prejudice to this charter party.

The ship to be consigned to F. Barreda & Brother, or their agents at Callao, and at the ports of discharge, who will charge in the first place one hundred and fifty dollars, and in the second place five per cent. on the freight for managing the ship's business. And if for any unforeseen event, the vessel should proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of F. Barreda & Brother (paying usual commissions), who shall perform all the business belonging to the ship.

Said agents are, at St. Thomas, Messrs. Pretto & Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso, or ports of Chili, Jose Cerveró, Esq., or his agents, and in other ports those who are or may be authorized by Messrs. Barreda & Brother.

The ship to find necessary dunnage.

The owners to be liable for all damages arising from side lights and ports.

The ship to be at Callao ready to load in the course of January, 1855, or before, under penalty hereinafter mentioned.

Penalty for non-performance of this charter party ten thousand dollars, which amount is fixed as indemnification of prejudices caused by the party delinquent to the party observant: political or other extraordinary and unforeseen circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers, and navigation of whatever nature and kind soever, during the said voyage always excepted.

It is also agreed this ship shall be loaded to 20 feet, without regard to the clause restricting her to one-third over register tonnage; provided the captain consider it safe to load to that draft.

It is further agreed, that within one week from the date hereof, the owners of said vessel may, if they see fit, elect to dispatch her direct to Callao and the Chincha Islands, as hereinbefore provided; and in case said owners shall so elect, the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her such outward cargo, not exceeding two hundred tons, as they may desire: Provided, they shall do so within ten days after the owners shall have announced their said election. The charterers, on the arrival of the vessel at the home port, to pay in full satisfaction of such earnings and privileges, and

of all outward freight, such gross sum as shall be equivalent to five dollars per ton on the return cargo delivered.

per F. BARREDA & BRO.,
W. BAMIL,
W. F. WELD & CO.

Witness to the signature of W. F. W. & Co.,
V. H. BROWN.

Witness to the signature B. & B.,
J. HOWARD.

BOSTON, *July* 6, 1854.

The owners of the above ship to dispatch her direct to Callao and Chincha from Boston.

VERNON, BROWN & SON,
Brokers.

Deposition of Nath'l L. McCready, witness for the plaintiffs, taken before R. E. Stillwall, Esq., U. S. Com. for the Southern District of New York, at the City of New York, on the 27th March, 1856.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss.

Be it remembered, that on this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and fifty-six, I, R. E. Stillwall, a commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "An Act in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States,'" passed 1st March, 1817, and the Act entitled "an act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be, and personally appear before me at my office in the City of New York, in the said Southern District of New York, in the State aforesaid, Nath'l L. McCready to testify, and the truth to say, on the part and behalf of the plaintiffs, in a certain suit or matter of controversy now depending, and undetermined in the Circuit Court of the United States for the Fourth Circuit, in and for the District of Maryland, wherein Benjamin H. Silsbee and others are plaintiffs, and Frederick L. Barreda *et al.* are defendants.

And the said Nathaniel L. McCready being about the age of thirty-five years, and having been by me first cautioned, and sworn to

testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Nathaniel L. McCready, and he did thereupon depose, say, and testify as follows, viz:—

I am a member of the firm of McCready, Mott & Co., and was so in 1854, during the whole of that year. Our firm chartered vessels to Barreda & Brothers to bring guano from the Chincha Islands to the United States. Charters were made either in the latter part of June, or the early part of July, 1854, and were signed in July, 1854. We made those charters through Nesmith & Sons, they acting as brokers in the transactions. The only two vessels I chartered Barreda & Brothers in July, 1854, were the ships Defiance, and Wings of the Morning. I negotiated personally with Nesmith & Sons in the charter of those vessels. I agreed with them upon the terms of the charter.

Interrogatory. Was the rate for the Chinchas agreed upon between you? (Objected to.)

Answer. My agreement was, that the Defiance was to go out in ballast and bring a full cargo of guano to the United States, at thirty dollars per ton. The "Wings of the Morning," was to go out to Australia, from thence proceed to the Chinchas, and bring a cargo of guano to the United States, at twenty-five dollars per ton. (Objected to as being incompetent, the agreement testified to, having been reduced to writing, and the writing not produced.)

Charter party produced and annexed, marked Exhibit No. 1. That was produced to me by Nesmith, to sign.

Interrogatory. Did anything occur, and if so, what, between you and Messrs. Nesmith & Sons, in reference to that charter so produced for your signature immediately before it was signed? (Objected to as incompetent.)

Answer. I objected to the charter; and Mr. Nesmith, to remove those objections, told me that there was no cargo to go out. I could take in ballast as soon as I pleased, and that charter party would make, or enable me to receive thirty dollars per ton. This is the substance of the conversation, although it may not be the exact words.

Interrogatory. Look at the charter "Exhibit No. 1," now produced, and say what portion of it you objected to to Mr. Nesmith, or Nesmith & Sons when they produced it for your signature as you have stated? (Objected to.)

Answer. That portion of it allowing us twenty-five dollars per ton on the guano, and five dollars additional per ton, as provided for in the last written clause of the charter party. I objected to the whole of the last part of the written charter, commencing with the words: "It is further agreed."

Interrogatory. Did you state to Mr. Nesmith, or Messrs. Nesmith & Sons, why you objected to the clause as produced? (Objected to.)

Answer. I did, sir. We had a number of conversations on the

subject, and the purport of them was our liability of being detained ten days. Mr. Nesmith's reply to me was that I had chartered the vessel at thirty dollars per ton, and, as long as I received that, and was under no detention here, as he would immediately notify me that they had no cargo to ship, and I could go to sea as soon as I pleased, I ought to be satisfied. This is the substance, although probably not the exact words that were used. Upon this the charter was signed. About the time the vessel was ready for sea, I think Mr. Nesmith told me that he had some 3 or 4 boxes of segars, or other merchandise, that could not be ready for some vessel that he had sent out, that he wanted me to take; I took them, more to accommodate him, as he did not insist upon it. She went direct to Chinchas.

Cross-examined by Mr. Lord.

The charter of the "Wings of the Morning" is dated July 6, 1854. The agreements for both vessels were made on the same day. The rate by the "Wings of the Morning" was $25 per ton; the two vessels were about the same age; if any difference, the "Defiance" was the oldest. They are both vessels of the same character, equally good. The difference in the rate of freight, as they told me, was because the "Defiance" went direct to Callao, and the "Wings of the Morning" went first to Australia.

N. L. McCREADY.

Sworn to before me this March 27, 1856.

R. E. STILLWALL.
U. S. Com.

Charter Party. Exhibit No. 1. *Ship Defiance.*

Charter Party. NEW YORK, *July* 7, 1854.

It is hereby mutually agreed between McCready, Mott and Company, owners and agents of the ship Defiance, sixteen hundred and ninety tons register measurement, now in the port of New York, on the one part, and F. Barreda & Brother, acting as agents for the Peruvian Government, on the other part, as follows:—

That the said vessel shall proceed to Callao from New York, and being tight, staunch, and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands, to take in her cargo.

After completing her loading of guano, the vessel to proceed direct to her destination.

A full cargo of guano, not to exceed one third above the register tonnage (unless otherwise agreed), to be furnished to the ship.

At the Chincha Islands, the vessel to be placed under the Mangueras, to load, or, at the option of the charterers, the cargo to be placed in the ship's or charterers' boats, and in them conveyed on board, at the ship's expense and shippers' risk.

One hundred running days to be allowed to the charterers for loading the ship at the islands, to commence from the day the master shall give notice, in writing, of being ready to receive and take on board, and to cease when the charterers' agents give notice that she is to receive no more cargo; and ten days to be allowed the master for taking in light freight and specie, as above specified, with all days on demurrage, in either case, if required, to be paid for at the rate of one hundred and forty dollars per day, from the party delinquent to the party observant.

The ship shall convey any specie that may be required for the payment of cargo, and any tools and bags for dunnage, free of freight; and must deliver, free of charge, either on board or alongside, any water that may be required at the guano ports, not exceeding seven tons.

The crew to sew up the mouths of the sacks, if required, free of expense, the charterers providing the twine; the sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborers' daily pay while so employed.

The owners of the vessel to pay all port charges.

The said vessel shall, after completing her loading, as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barreda & Brother, from Baltimore, or their agents, to discharge in any safe port of sea or rivers between Hampton Roads and Cape Ann, and there, according to bills of lading, deliver her cargo, which is to be discharged and taken from alongside as fast as the custom of the port to which she may be ordered will permit: the consignee having the liberty of naming the dock or wharf at which the cargo is to be landed. The freight to be paid as under, at the rate of twenty-five dollars in full per ton of 20 cwt. net of guano, custom-house weights. In calculating the freight, the proper percentage of water on all that turns out damaged, is to be deducted.

The master, if required, is to be supplied in Callao with a sum not exceeding twelve thousand dollars, which together with ten per cent. premium on the same and cost of insurance on such premium and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners. And should the charterers or their agents think fit to advance any further sum on the credit of the freight, for repairs, stores and disbursements, such sums with premium, interest, commission and insurance, to be considered in part payment of freight to the master, the captain's receipt for which is to be binding on the owners. A part of the freight not exceeding one-third, at the option of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the

cargo, by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignee; the captain to grant a receipt in triplicate for the amount of freight when settled, stating also the number of tons of guano delivered.

The captain to sign bills of lading without reference to the rate of freight, without prejudice to this charter party. The ship to be consigned to F. Barreda and Brother, or their agents at Callao, and the port of discharge, who will charge in the first place one hundred and fifty dollars, and in the second place, five per cent. on the freight for managing the ship's business. And if for any unforeseen event, the vessel shall proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of F. Barreda and Brother (paying usual commissions), who shall perform all the business belonging to the ship. Said agents are, at St. Thomas, Messrs. Pretto and Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso, or ports of Chili, Jose Cervero, Esq., or their agents; and in other ports, those who are or may be authorized by Messrs. F. Barreda and Brother.

The ship is to find necessary dunnage.

The owners to be liable for all damages arising from side lights and ports.

The ship to be at Callao ready to load in the course of January, 1855, or before, under the penalty hereafter mentioned. Penalty for non-performance of this charter party, fifteen thousand dollars, which amount is fixed as indemnification of prejudices caused by the party delinquent to the party observant; political or other extraordiary and unforeseen circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers and navigation, of whatever nature and kind soever, during the said voyage, always excepted.

It is further agreed that within one week from the date hereof, the owners of said vessel may, if they see fit, elect to dispatch her direct to Callao and the Chincha Islands to load as herintofore provided, and in case said owners shall so elect, the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her such outward cargo not exceeding two hundred tons as they may desire. Provided they shall do so within ten days after the owners shall have announced their said election. The charterers on the arrival of the vessel at her home port to pay in full satisfaction for such earnings and privilege, and of all outward freight, such gross sum as shall be equivalent to five dollars per ton on the return cargo delivered.

McCREADY, MOTT & Co.

Witness to sig.,
HENRY E. NESMITH.

Pp. F. BARREDA & BROTHER,
W. BAMIT.

Witness,
J. HOWARD.

All of which depositions it was admitted were duly taken by the respective commissioners after proper notice.

And thereupon the said plaintiff further proved by Captain James Frazier, of the city of Baltimore (whose testimony was likewise taken subject to all proper and legal exceptions):

Evidence of Captain Jas. Frazier, witness for Pl'tffs.

That in July, 1854, he was a part owner of the ship Sir John Franklin, then at Philadelphia, and that the charter party following.

Charter Party. Ship Sir John Franklin.

It is hereby mutually agreed between Wm. H. Frazier, agent of the ship Sir John Franklin, 1000 tons register measurement, now in the port of Philadelphia, on the one part, and F. Barreda and Brother, acting as agents for the Peruvian Government, on the other part, as follows:—

That the said vessel shall proceed to Callao from a port in the Indian or Pacific Ocean, where she is at present bound; and being tight, staunch and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands, to take in her cargo.

After completing her loading of guano, the vessel to proceed direct to her destination.

A full cargo of guano, not to exceed one-third above the register tonnage (unless otherwise agreed), to be furnished to the ship.

At the Chincha Islands, the vessel to be placed under the Mangueras to load, or at the option of the charterers the cargo to be placed in the ship's or charterers' boats, and in them conveyed on board, at ship's expense, and shippers' risk.

Eighty-five running days to be allowed to the charterers for loading the ship at the *the* Islands, to commence from the day the master gives notice in writing, of being ready to receive and take on board, and to cease when the charterers' agents give notice that she is to receive no more cargo; and ten days to be allowed the master for taking in light freight and specie, as above specified, with all days on demurrage in either case (if required) to be paid for at the rate of one hundred and thirty dollars per day, from the party delinquent to the party observant.

The ship shall convey any specie that may be required for the payment of cargo, and any tools, and bags for dunnage free of freight; and must deliver free of charge, either on board or alongside any water that may be required at the guano ports, not exceeding three tons.

The crew to sew up the mouths of the sacks if required, free of expense, the charterers providing the twine; the sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the

loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborer's daily pay while so employed. The owners of the vessel to pay all port charges. The said vessel shall, after completing her loading, as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barreda and Brother from Baltimore, or their agents, to discharge in any safe port of sea or river in the United States, not north of Cape Ann nor south of Hampton Roads, and there according to bills of lading deliver her cargo, which is to be discharged and taken from alongside, as fast as the custom of the port to which she may be ordered will permit; the consignee having the liberty of naming the dock or wharf at which the cargo shall be landed.

The freight to be paid as under, at the rate of twenty-five dollars in full per ton of 20 cwt. net of guano, custom-house weight. In calculating the freight, the proper percentage of water on all that turns out damaged, is to be deducted.

The master, if required, to be supplied at Callao with a sum not exceeding seventy-five hundred dollars, which, together with ten per cent. premium on the same, and cost of insurance on such premium and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners. And should the charterers, or their agents, think fit to advance any further sum on the credit of the freight, for repairs, stores, and disbursements, such sums with premium, interest, commission, and insurance, to be considered in part payment of freight to the master, the captain's receipt for which to be binding on the owners. A part of the freight not exceeding one-third, at the option of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo, by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignee; the captain to grant a receipt in triplicate for the amount of freight, when settled, stating also the number of tons of guano delivered.

The captain to sign bills of lading without reference to the rate of freight, and without prejudice to this charter party.

The ship to be consigned to F. Barreda & Brother, or their agents at Callao, and the port of discharge, who will charge in the first place one hundred and fifty dollars, and in the second, five per cent. on the freight for managing the ship's business. And if for any unforeseen event the vessel should proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of F. Barreda & Brother (paying usual commissions), who shall perform all the business belonging to the said ship. Said agents are, at St. Thomas, Messrs. Pretto & Aldecao; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso, or ports of Chili, Jose Cer-

veró, Esq., or their agents, and in other ports those who are or may be authorized by Messrs. Barreda & Brother.

The ship to find necessarry dunnage.

The owners to be liable for all damages arising from side lights and ports.

The ship to be at Callao ready for loading in the course of January, 1855, or before, under the penalty hereinafter mentioned.

Penalty for non-performance of this charter party fourteen thousand dollars, which amount is fixed as indemnification of prejudices caused by the party delinquent to the party observant: political or other extraordinary and unforeseen circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers, and navigation of whatever nature and kind soever, during said voyage, always excepted.

It is further agreed that within one week from the date hereof, the owners of said vessel may, if they see fit, elect to dispatch her direct to Callao and the Chincha Islands to load, as hereintofore provided.

And in case said owners shall so elect, the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her such outward cargo, not exceeding two hundred tons, as they may desire. Provided they shall do so within ten days after the owners shall have announced their said election.

The charterers on the arrival of the vessel at the home port to pay, in full satisfaction of such earnings and privileges and of all outward freight, such gross sum as shall be equivalent to five dollars per ton on the return cargo delivered.

W. H. FRAZIER,
Agent of the ship Sir John Franklin.

Pp. F. BARREDA & BRO.
W. BAMIL.

Witness both parties,
J. HOWARD.

was entered into on or about the 11th day of July, 1854, with the defendants; that the said vessel was by the terms of said charter to load at the Chincha Islands in the course of January, 1855, and arrived at Hampton Roads on her return voyage in April, 1855; that the owners of said ship received thirty dollars ($30) per ton for the guano delivered, and that the agreement was, that if they took out cargo they were to receive but twenty-five dollars ($25) per ton for the return cargo; that the ship got off in a few days after the charter was made; she waited more than seven days before going, and went out in ballast.

And the said witness further stated, that the said ship was not put up for freight by the defendants, nor advertised to take cargo to

his knowledge, nor did her owners contemplate any voyage to any port in the Indian or Pacific Ocean at the time of the making of said charter party, but that they regarded themselves as getting a thirty dollar charter for guano. She took out no cargo for the defendants, and they offered to send none.

Upon being asked whether he knew of many shipments of outward cargo direct from Baltimore to Callao within the last ten years? He stated that in 1849, the ship Susan E. Howell took out a cargo of coal and lumber on owners' account to Callao, and brought home guano at $19 per ton. In 1854, he said there was a great rise in guano freight. Before they had been much lower than $30 per ton, but then they rose to $30 per ton.

Cross-examined.

And the said James Frazier being cross-examined stated, that the charter party as given in evidence, contains the agreement between the defendants and the owners of the said Sir John Franklin, for the voyage referred to, and that there was no other agreement between them as appears thereby, and no agreement or understanding to prevent either of the parties from availing themselves of the privileges or conditions therein given or contained, or from being bound thereby. And he further stated that he settled for the freight of said ship on her return, and was paid the same, according to the account and receipt shown to him, which are as follows :—

Account.

Am. ship Sir John Franklin and Owners in acc't with F. Barreda & Brother.

1855.		Dr.	Cr.
Ap'l 19.	To blanks and postages paid in Norfolk	50	
30.	Amount advanced in Baltimore	6,000 00	
May 10.	Comm'n on $44,788 80, at 5 per ct.,	2,239 29	
	Int. on adv's $12,760 71	127 61	
	Cash	6,632 60	
	Notes at 2 months from April 30, $4,000	29,938 17	
	May 5, 2,200		
	7, 8,800		
	7, 3,000		
	12, 2,938 17		
	15, 4,000		
	15, 2,000		
	20, 3,000		

May 10.	By freight on 1492 19. 1. 22 tons guano delivered this day at $25, as per charter party		37,324 00
	By compensation for the use of the vessel outward		7,464 80
	Allowance of 1 per ct. per ton on 1493 14. 1. 11 discharged from the vessel		149 37
		$44,938 17	$44,938 17.

E. E.

BALTIMORE, 10*th May*, 1855.

Receipt.

Baltimore, May 10th, 1855. Received from F. Barreda & Brother, forty-four thousand seven hundred and eighty-eight $\frac{80}{100}$ dollars in full, for freight inwards, including compensation for use of the vessel outwards on 1492 tons, 19 cwt., 0 qrs., 42 lbs. guano delivered this day at this port, from on board the American ship Sir John Franklin, of which I am the agent, the said guano having been transported in that vessel from the Chincha Islands in accordance with charter party and subsequent agreement. Signed in duplicate.

$44,788\frac{80}{100}$. WM. H. FRAZIER.

Re-examined in chief.

And the said Frazier being re-examined in chief, states that an average passage from Baltimore to Callao occupied from ninety to one hundred and twenty days; from Baltimore to Melbourne, one hundred to one hundred and twenty days; from Australia to Callao, from forty to sixty days; from Baltimore to San Francisco, from one hundred and twenty to one hundred fifty days; from San Francisco to the Chincha Islands, from fifty to sixty days; and that a voyage from Amsterdam to Callao, and a voyage from Baltimore to Callao, would occupy on an average about the same length of time.

Evidence of Otho H. Williams, witness for the Pl'tffs.

The plaintiffs then further proved by Otho H. Williams, of the City of Baltimore (who was likewise examined, subject to all legal and proper exceptions to his testimony), that he was a member of the firm of William Howell & Son, of the City of Baltimore, who were owners of the ship Susan E. Howell, and on or about the 29th of July, 1854, entered into the charter party following with the defendants.

Charter Party of the Ship Susan E. Howell.

BALTIMORE, *July 29th*, 1854.

It is hereby mutually agreed between Wm. Howell & Son, owners of the ship Susan E. Howell, $730\frac{56}{95}$ tons register measurement, now in the port of Baltimore, on the one part, and F. Barreda & Brother, acting as agents for the Peruvian Government, on the other part, as follows:

The said vessel shall proceed to Callao, from a port in the Indian or Pacific Ocean, where she is at present bound, and being tight, staunch, and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands to take in her cargo. After completing her loading of guano, the vessel shall proceed direct to her destination. A full cargo of guano, not to exceed one-third above her register tonnage (unless otherwise agreed), to be furnished to the ship.

At the Chincha Islands, the vessel to be placed under the Mangueras to load, or at the option of the charterers the cargo to be placed in the ship's or charterers' boats, and in them conveyed on board at ship's expense and shippers' risk.

Seventy-three running days to be allowed to the charterers for loading the ship at the Islands, to commence from the day the master gives notice in writing, of being ready to receive and take on board, and to cease when the charterers' agents give notice that she is to receive no more cargo; and ten days to be allowed the master for taking in light freight and specie, as above specified with all days on demurrage, in either case (if required), to be paid for at the rate of one hundred dollars per day from the party delinquent to the party observant.

The ship shall convey any specie that may be required for the payment of cargo, and any tools, and bags for dunnage free of freight; and must deliver free of freight, either on board or alongside, any water that may be required at the guano ports, not exceeding five tons.

The crew to sew up the mouths of the sacks if required, free of expense, the charterers providing twine; the sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborers' daily pay while so employed.

The owners of the vessel to pay all port charges. The said vessel shall, after completing her loading as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barreda & Brother, from Baltimore, or their agents, to discharge in any safe port of sea or rivers in the United States not north of Cape Ann or south of Hampton Roads, and

there, according to bills of lading, deliver her cargo, which to be discharged and taken from alongside as fast as the custom of the port to which she may be ordered will permit; the consignees to have the liberty of naming the dock or wharf at which the cargo is to be landed.

The freight to be paid as under, at the rate of twenty-five dollars in full per ton of 20 cwt. net of guano, custom-house weights. In calculating the freight, the proper percentage of water on all that turns out damaged, is to be deducted.

The master, if required, to be supplied in Callao with a sum not exceeding————, which, together with ten per cent. premium on the same, and cost of insurance on such premium and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners. And should the charterers, or their agents, think fit to advance any further sum on the credit of the freight for repairs, stores and disbursements, such sums with premium, interest, commission and insurance, to be considered in part payment of the freight to the master, the captain's receipt for which is to be binding on the owners. A part of the freight, not exceeding one-third, at the discretion of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo, by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignee, the captain to grant a receipt in triplicate for the amount of freight, when settled, stating also the number of tons of guano delivered.

The captain to sign bills of lading without reference to the rate of freight, without prejudice to this charter party.

The ship to be consigned to F. Barreda & Brother, or their agents at Callao, and at the port of discharge, who will charge in the first place, one hundred and fifty dollars, and in the second place, five per cent. on the freight for managing the ship's business. And if for any unforeseen event the vessel shall proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain shall be obliged to consign her to the agent or agents of F. Barreda & Brother (paying usual commissions), who shall perform all the business belonging to the ship. Said agents are, at St. Thomas, Messrs. Pretto & Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso, or ports of Chili, Jose Cerveró, Esqr., or their agents; and in other ports, those who are or may be authorized by Messrs. Barreda & Brother.

The ship to find necessary dunnage.

The owners to be liable for all damages arising from side lights or ports.

The ship to be at Callao ready to load in the course of January, 1855, or before, under the penalty of ten thousand dollars, which amount is fixed as indemnification of prejudices caused by the party delinquent to the party observant; political or other extraordinary

circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers, and navigation, of whatever nature and kind soever, during the said voyage, always excepted.

It is further agreed that within one week from the date hereof, the owners of said vessel may, if they see fit, elect to dispatch her direct to Callao and the Chincha Islands to load as hereintofore provided. And in case said owners shall so elect, the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her such outward cargo, not exceeding two hundred tons, as they may desire: Provided, they shall do so within ten days after the owners shall have announced their said election. The charterers on the arrival of the vessel at the home port, to pay in full satisfaction for such earnings and privilege, and of all outward freight, such gross sum as shall be equivalent to five dollars per ton on the return cargo delivered.

It is also agreed that the ship will draw nineteen feet and one-half, without regard to the clause restricting her to one-third over her register tonnage.

Pp. F. BARREDA & BROTHER,
W. BAMIL,

Witness to the signature of Barreda & Brother,

J. A. HELGUERO.

WM. HOWELL & SON.

Witness to the signature of Wm. Howell & Son,

PRUDENCIO DE NEUGUEORIDA.

Said ship was to load at the Chincha Islands in January, 1855. She was at Baltimore when the charter was made, and sailed on her voyage on the 14th of August, 1854; her owners received freight for the cargo of guano delivered to the Messrs. Barreda at the rate of thirty dollars ($30) per ton.

The said ship was not put up, nor advertised for freight by the defendants, nor did the owners contemplate any voyage, when the charter was made, to any port in the Indian or Pacific Ocean. They considered themselves as making a charter for thirty dollars per ton of guano. The ship went out in ballast, and the owners elected to send her out in ballast.

She took out no cargo for the defendants, and none was offered by them for her.

Had not told Barreda that they desired to go to any other port, and when witness elected to go to Callao, never intended to go to any other port. The election was not endorsed on the charter party. He elected orally at the conversation preceding the election; witness was dealing with Barreda for a direct voyage; and at the time witness signed the charter party it was his intention to send the ship direct to Callao.

Cross-examined.

And the said witness being cross-examined, stated that the charter party in evidence represented the true contract for the voyage referred to, and that there was no other agreement attending its terms, rights, or obligations in any way; that the owners had ten days to elect to go out direct in ballast, and they did so; they elected orally; told Mr. Frederick Barreda that they would go out in ballast.

On being asked whether they (the owners) could not have sent the ship to Valparaiso if they had chosen, the witness replied that of course they could have done so, if they had pleased, but that they elected to send her direct to Callao. The witness further stated that in settling for and receiving the freight on the ship's return, he received the same according to the account and receipt here produced.

Account.

Am. Ship Susan E. Howell in acc. with F. Barreda & Bro.

1855.				
July 10.	By freight on 1154. 5. 1. 17 tons guano, delivered this day, @ $25 per ton, for charter party,		$28,856	75
	Compensation for use of vessel outwards		5,771	35
	Allowance of 10 per cent. on 1159. 4. 1. 4 tons, discharged from the vessel		115	92
July 10.	Comm's on $34,744 02 @ 5 per cent.	1,731 41		
	Cash	15,000 00		
	2 notes, at 2 months, $8,931 30, and $8,931 30	17,862 61		
		$34,744 02	$34,744	02

E. E.

BALTIMORE, *July* 10, 1855.

Receipt.

BALTIMORE, *July* 10, 1855.

Received from F. Barreda & Brother, thirty-four thousand six hundred and twenty-eight $\frac{10}{100}$ dollars, in full for freight on 1,154 tons, 5 cwt. 1 qr. 17 lbs. guano, delivered this day, at this port, from on board the American ship Susan E. Howell, of which we are the owners, the said guano having been transported in that vessel from the Chincha Islands, in accordance with charter party and subsequent agreement. Signed in duplicate.

$34,628 10. WM. HOWELL & SON.

Evidence of James Birckhead, Jr., Witness for Pl'tffs.

The plaintiffs then further proved, by James Birckhead, Jun., of the City of Baltimore (whose testimony was likewise taken, subject to all legal and proper exceptions), that as one of the owners of the ship Stephen Lurman, he did, on or about the 30th day of June, 1854, enter into the charter party following:—

Charter Party, Ship Stephen Lurman.

Charter Party. BALTIMORE, *June* 30, 1854.

It is hereby mutually agreed between Birckhead & Brother, owners of the ship Stephen Lurman, four hundred and fifty-three tons register measurement, now in the port of on the one part, and F. Barreda & Brother, acting as agents for the Peruvian Government, on the other part, as follows: That the said vessel shall proceed to Callao, from Amsterdam, where she is at present bound, and being tight, staunch and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands, to take in her cargo. After completing her loading of guano, the vessel shall proceed direct to her destination.

A full cargo of guano, not exceeding one-third above her register tonnage (unless otherwise agreed), to be furnished to the ship.

At the Chincha Islands, the ship to be placed under the Mangueras to load, or at the option of the charterers, the cargo to be placed in the ship's or charterers' boat, and in them conveyed on board, at ship's expense and shipper's risk.

Forty-five running days to be allowed to the charterers for loading the ship at the Islands, to commence from the day the master gives notice, in writing, of being ready to receive and take on board, and to cease when the charterers' agents gives notice that she is to receive no more cargo; and ten days to be allowed the master for taking in light freight and specie, as above specified, with all days on demurrage, in either case (if required) to be paid for at the rate of seventy dollars per day, from the party delinquent to the party observant.

The ship shall convey any specie that may be required for the payment of cargo, and any tools, and bags for dunnage, free of freight, and must deliver free of charge, either on board or alongside, any water that may be required at the guano ports, not exceeding three tons.

The crew to sew up the mouths of the sacks, if required, free of expense, the charterers providing twine; the sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborer's daily pay while so employed.

The owners of the vessel to pay all port charges.

The vessel shall, after completing her loading as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barreda & Brother, from Baltimore, or their agents, to discharge in any safe port of sea or rivers in the United States, not north of Cape Ann, nor south of Hampton Roads, and there, according to bills of lading, deliver her cargo, which is to be discharged and taken from alongside as fast as the custom of the port to which she may be ordered will permit; the consignee having the liberty of naming the dock or wharf at which the cargo is to be landed.

The freight to be paid as under, at the rate of twenty-five dollars in full per ton of 20 cwt., net guano, custom-house weights. In calculating the freight, the proper percentage of water on all that turns out damaged, is to be deducted.

The master, if required, to be supplied in Callao with a sum not exceeding four thousand dollars, which together with ten per cent. premium on the same, and cost of insurance on such premium and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners: And should the charterers or their agents think fit to advance any further sum on the credit of the freight, for repairs, stores and disbursements, such sum, with premium, interest, commission and insurance, to be considered in part payment of freight to the master, the captain's receipt for which is to be binding on the owners. A part of the freight not exceeding one-third, at the option of the charterers, is to paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the right and true delivery of the cargo, by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignee; the captain to grant a receipt in triplicate for the amount of freight, when settled, stating also the number of tons of guano delivered.

The captain to sign bills of lading without reference to the rate of freight, and without prejudice to this charter party.

The ship to be consigned to F. Barreda & Brother, or their agents at Callao, and at the port of discharge, who will charge, in the first place, one hundred and fifty dollars, and in the second, five per cent. on the freight for managing the ship's business: And if for any unforeseen event the vessel shall proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of F. Barreda & Brother (having the usual commissions), who shall perform all the business belonging to the ship. Said agents are, at St. Thomas, Messrs. Pretto & Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers, & Co.; at Valparaiso, or ports of Chili, Jose Cerveró, Esq., or their agents; and in other ports, those who are or may be authorized by Messrs. F. Barreda & Brother.

The ship to find necessary dunnage.

The owners to be liable for all damages arising from side lights and ports.

The ship to be at Callao ready to load in the course of January, 1855, or before, under the penalty hereinafter mentioned. Penalty for non-performance of this charter party seven thousand dollars, which amount is fixed as indemnification of all prejudices caused by the party delinquent to the party observant; political or other extraordinary circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers, and navigation, of whatever nature and kind soever during the said voyage, always excepted.

It is further agreed that the owners of said ship are to dispatch her direct from Amsterdam to Callao and the Chincha Islands, to load as hereintofore provided, and the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her such outward cargo, not exceeding two hundred tons as they may desire, provided that they shall notify their intention to do so, within ten days after the date of charter party, in which case said cargo to be put on board within seven days after the captain of said ship shall have announced his readiness to receive cargo.

The charterers, on the arrival of the vessel at the home port, to pay in full satisfaction of such earnings and privilege, and of all outward freight such gross sum as shall be equivalent to five dollars per ton on the return cargo delivered.

Witness of signature of BIRCKHEAD & BROTHER,

THOMAS B. LEWIS.

pp. F. BARREDA & BR.

Witness of signature,

J. A. HELGURICO.

With the defendants.

The said ship was then at sea, on a voyage to Amsterdam, and the contract was from Amsterdam. She was to proceed direct to Callao, and that the defendants were to have the use of the vessel out from Amsterdam to Callao. The owners were to receive twenty-five dollars per ton ($25) freight, for bringing the guano home, and at the rate of five dollars per ton of the return cargo for the use of the vessel out from Amsterdam.

The ship left Amsterdam in July, 1854, and reached the Islands towards the end of November. She was not put up for freight that the witness knew of, nor did she carry out any cargo for the defendants. They, the defendants, offered to send none by her. The witness further proved that the manuscript portion of the charter party produced was filled up by his (the witness's) own clerk. He further testified that after the making of the charter party produced by him, there was no change in guano freights. The same charge as in wit-

ness's charter party was paid for the use of vessels out, and the freight of guano home.

He further stated that two hundred tons cargo would have been a light load for the said ship, and would have put her in light ballast. The witness further proved that a clipper ship would make the voyage from the United States to Amsterdam, on an average, in from seventy (70) to ninety (90) days, and an ordinary ship would usually occupy about an hundred and twenty days. About eighty days (he said) would be an average voyage from Amsterdam to the Chincha Islands. He further stated in answer to a question asked, that, if the defendants had no cargo to take from Amsterdam to Callao, he could not imagine any reason for their making the contract they did, other than that of bringing their guano from the Chincha Islands. The defendants had nothing to do with the outward voyage to Amsterdam. The vessel had left Baltimore for Amsterdam ten days before the charter was made. Witness wrote to the captain, at Amsterdam, with a copy of the charter. The vessel remained ten days in Amsterdam. Witness, after the charter, had no conversation about the vessel with the defendants, until about the time of her arrival at the Islands, nor did he receive from them any notice of any outward cargo from Amsterdam.

Cross-examined.

And the said witness being cross-examined, stated that the charter party contained, in every particular, the contract made with the defendants for the voyage in question, and that there was no agreement or understanding varying the terms thereof, or precluding either party from using the privileges thereby given. The witness when he made the charter, had no intention of sending any cargo out from Amsterdam to Callao, but he might and would have done so, if he had seen fit. Witness settled with the defendants for the freight on the discharge of the return cargo according to the account and receipt following.

Account.

Am. Ship Stephen Lurman in acc't with F. Barreda & Brother.

1854.		Dr.	Cr.
Dec'r 29.	Am't advanced in Lima,	3,736 38	
April 21.	Do. in Baltimore,	2,500 00	
26.	Do. in do.,	2,059 65	
	Comm. on $18,480 84, 5 per ct.,	924 04	
	Am't paid for discharging 616. 17. 2. 26 tons a 4,	277 60	
	Interest on advances, 2 mos., on $4,882 11,	48 82	
	Our 3 notes, dated this day at 2 mos., $3,000 ea.,	9,000 00	

April 26.	By freight on 616. 6. 2. 7 tons guano, delivered to-day, at $25 per ton, per Charles Garty,		$15,408 70
	Compensation for use of vessel from Amsterdam to Callao,		3,018 14
	Allowance of 1 c. per ton on 616. 17. 2. 26 tons discharged from vessel,		61 69
		$18,542 53	$18,542 53

E. E.

BALTIMORE, *April* 26, 1855.

Receipt.

BALTIMORE, *April* 26, 1855.

Received from F. Barreda & Brother eighteen thousand four hundred and eighty $\frac{84}{100}$ dollars, in full for freight and compensation for use of the vessel from Amsterdam to Callao on 616 tons, 0 cwt., 2 qrs., 7 lbs. guano, delivered this day at this port from on board the American ship Stephen Lurman, of which we are the owners; the said guano having been transported in that vessel from the Chincha Islands, in accordance with charter party and subsequent agreement. Signed in duplicate.

BIRCKHEAD & BROTHER.

Evidence of Robert Fisher, witness for the plaintiffs.

The plaintiffs further proved by Robert Fisher, of the City of Baltimore (whose testimony was likewise taken, subject to all proper and legal exception), that the house of James J. Fisher & Sons, of which he was a member, did, on or about the 29th day of July, 1854, charter the ship Robert C. Winthrop, then in the port of Baltimore, to the defendants, under the charter party produced.

Charter Party, Ship Robert C. Winthrop.

Charter Party. BALTIMORE, *July 29th*, 1854.

It is hereby mutually agreed between J. J. Fisher & Sons, part owners and agents of the ship Robert C. Winthrop, 781 tons register measurement, now in the port of Baltimore, on the one part, and F. Barreda & Brother, acting agents for the Peruvian Government, on the other part, as follows:—

That the said vessel shall proceed to Callao from a port in the Indian or Pacific Ocean, where she is at present bound, and being tight, staunch and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands, to take in her cargo.

ness's charter party was paid for the use of vessels out, and the freight of guano home.

He further stated that two hundred tons cargo would have been a light load for the said ship, and would have put her in light ballast. The witness further proved that a clipper ship would make the voyage from the United States to Amsterdam, on an average, in from seventy (70) to ninety (90) days, and an ordinary ship would usually occupy about an hundred and twenty days. About eighty days (he said) would be an average voyage from Amsterdam to the Chincha Islands. He further stated in answer to a question asked, that, if the defendants had no cargo to take from Amsterdam to Callao, he could not imagine any reason for their making the contract they did, other than that of bringing their guano from the Chincha Islands. The defendants had nothing to do with the outward voyage to Amsterdam. The vessel had left Baltimore for Amsterdam ten days before the charter was made. Witness wrote to the captain, at Amsterdam, with a copy of the charter. The vessel remained ten days in Amsterdam. Witness, after the charter, had no conversation about the vessel with the defendants, until about the time of her arrival at the Islands, nor did he receive from them any notice of any outward cargo from Amsterdam.

Cross-examined.

And the said witness being cross-examined, stated that the charter party contained, in every particular, the contract made with the defendants for the voyage in question, and that there was no agreement or understanding varying the terms thereof, or precluding either party from using the privileges thereby given. The witness when he made the charter, had no intention of sending any cargo out from Amsterdam to Callao, but he might and would have done so, if he had seen fit. Witness settled with the defendants for the freight on the discharge of the return cargo according to the account and receipt following.

Account.

Am. Ship Stephen Lurman in acc't with F. Barreda & Brother.

1854.		Dr.	Cr.
Dec'r 29.	Am't advanced in Lima,	3,736 38	
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26.	Do. in do.,	2,059 65	
	Comm. on $18,480 84, 5 per ct.,	924 04	
	Am't paid for discharging 616. 17. 2. 26 tons a 4,	277 60	
	Interest on advances, 2 mos., on $4,882 11,	48 82	
	Our 3 notes, dated this day at 2 mos., $3,000 ea.,	9,000 00	

April 26. By freight on 616. 6. 2. 7 tons guano, delivered to-day, at $25 per ton, per Charles Garty,		$15,408 70
Compensation for use of vessel from Amsterdam to Callao,		3,018 14
Allowance of 1 c. per ton on 616. 17. 2. 26 tons discharged from vessel,		61 69
	$18,542 53	$18,542 53

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BIRCKHEAD & BROTHER.

Evidence of Robert Fisher, witness for the plaintiffs.

The plaintiffs further proved by Robert Fisher, of the City of Baltimore (whose testimony was likewise taken, subject to all proper and legal exception), that the house of James J. Fisher & Sons, of which he was a member, did, on or about the 29th day of July, 1854, charter the ship Robert C. Winthrop, then in the port of Baltimore, to the defendants, under the charter party produced.

Charter Party, Ship Robert C. Winthrop.

Charter Party. BALTIMORE, *July 29th*, 1854.

It is hereby mutually agreed between J. J. Fisher & Sons, part owners and agents of the ship Robert C. Winthrop, 781 tons register measurement, now in the port of Baltimore, on the one part, and F. Barreda & Brother, acting agents for the Peruvian Government, on the other part, as follows:—

That the said vessel shall proceed to Callao from a port in the Indian or Pacific Ocean, where she is at present bound, and being tight, staunch and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands, to take in her cargo.

After completing her loading of guano, the vessel to proceed direct to her destination.

A full cargo of guano, not to exceed one-third above the register tonnage (unless otherwise agreed), to be furnished to the ship.

At the Chincha Islands the vessel to be placed under the Mangueras to load, or, at the option of the charterers, the cargo to be placed in the ship's or charterers' boats, and in them conveyed on board at the ship's expense and shipper's risk.

Seventy-eight running days to be allowed to the charterers for loading the ship at the Islands, to commence from the day the master gives notice, in writing, of being ready to receive and take on board, and to cease when the charterers' agents give notice that she is to receive no more cargo; and ten days to be allowed the master for taking in light freight and specie, as above specified, with all days on demurrage, in either case (if required) to be paid for at the rate of one hundred dollars per day from the party delinquent to the party observant.

The ship shall convey any specie that may be required for the payment of cargo, and any tools and bags for dunnage free of freight; and must deliver, free of charge, either on board or alongside, any water that may be required at the guano ports, not exceeding five tons.

The crew to sew up the mouths of the sacks, if required, free of expense, the charterers providing the twine; the sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborers' daily pay while so employed.

The owners of the vessel to pay all port charges. The said vessel shall, after completing her loading, as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barreda & Brother from Baltimore, or their agents, to discharge in any safe port of sea or rivers in the United States not north of Cape Ann, or south of Hampton Roads; and there, according to bills of lading, deliver her cargo, which is to be discharged and taken from alongside, as fast as the custom of the port to which she may be ordered will permit; the consignee having the liberty of naming the dock or wharf at which the cargo is to be landed.

The freight to be paid as under, at the rate of twenty-five dollars, in full, per ton of 20 cwt. net guano, custom-house weights. In calculating the freight, the proper percentage of water on all that turns out damaged is to be deducted.

The master, if required, to be supplied in Callao, with a sum not exceeding five thousand dollars, which, together with ten per cent. premium on the same, and cost of insurance on such premium and advance, is to be considered in part payment of the freight, the cap-

tain's receipt to be binding on the owners. And should the charterers or their agents think fit to advance any further sum on the credit of the freight for repairs, stores and disbursements, such sums, with premium, interest, commissions, and insurance, to be considered in part payment of freight to the master, the captain's receipt for which is to be binding on the owners. A part of the freight, not exceeding one-third, at the option of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo, by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignees; the captain to grant a receipt in triplicate for the amount of freight when settled, stating also the number of tons of guano delivered.

The captain to sign bills of lading without reference to rate of freight, and without prejudice to this Charter Party.

The ship to be consigned to F. Barreda & Brother, or their agents at Callao, and at the port of discharge, who will charge, in the first place, one hundred and fifty dollars, and, in the second, five per cent. on the freight for managing the ship's business. And if, for any unforeseen event, the vessel shall proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of F. Barreda & Brother (paying the usual commissions), who shall perform all the business belonging to the ship.

Said agents are, at St. Thomas, Messrs. Pretto & Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso, or ports of Chili, Jose Cerveró, Esq., or their agents, and in other ports, those who are, or may be, authorized by Messrs. F. Barreda & Brother.

The ship to find necessary dunnage.

The owners to be liable for all damages arising from side lights and ports.

The ship to be at Callao, ready to load in the course of February, 1855, or before, under the penalty hereinafter mentioned. Penalty for non-performance of this Charter Party, ten thousand dollars, which amount is fixed as indemnification of prejudices, caused by the party delinquent to the party observant: political or other extraordinary circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers and navigation, of whatever nature and kind soever, during the said voyage, always excepted.

It is further agreed, that within one week from the date hereof, the owners of said vessel may, if they see fit, elect to dispatch her direct to Callao and the Chincha Islands, to load as heretofore provided, and in case said owners shall so elect, the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her such outward cargo, not exceeding two hundred tons, as they may desire; provided they shall do so within ten days after the owners shall have announced their said election. The charterers, on the arrival of the vessel at the

After completing her loading of guano, the vessel to proceed direct to her destination.

A full cargo of guano, not to exceed one-third above the register tonnage (unless otherwise agreed), to be furnished to the ship.

At the Chincha Islands the vessel to be placed under the Mangueras to load, or, at the option of the charterers, the cargo to be placed in the ship's or charterers' boats, and in them conveyed on board at the ship's expense and shipper's risk.

Seventy-eight running days to be allowed to the charterers for loading the ship at the Islands, to commence from the day the master gives notice, in writing, of being ready to receive and take on board, and to cease when the charterers' agents give notice that she is to receive no more cargo; and ten days to be allowed the master for taking in light freight and specie, as above specified, with all days on demurrage, in either case (if required) to be paid for at the rate of one hundred dollars per day from the party delinquent to the party observant.

The ship shall convey any specie that may be required for the payment of cargo, and any tools and bags for dunnage free of freight; and must deliver, free of charge, either on board or alongside, any water that may be required at the guano ports, not exceeding five tons.

The crew to sew up the mouths of the sacks, if required, free of expense, the charterers providing the twine; the sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborers' daily pay while so employed.

The owners of the vessel to pay all port charges. The said vessel shall, after completing her loading, as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barreda & Brother from Baltimore, or their agents, to discharge in any safe port of sea or rivers in the United States not north of Cape Ann, or south of Hampton Roads; and there, according to bills of lading, deliver her cargo, which is to be discharged and taken from alongside, as fast as the custom of the port to which she may be ordered will permit; the consignee having the liberty of naming the dock or wharf at which the cargo is to be landed.

The freight to be paid as under, at the rate of twenty-five dollars, in full, per ton of 20 cwt. net guano, custom-house weights. In calculating the freight, the proper percentage of water on all that turns out damaged is to be deducted.

The master, if required, to be supplied in Callao, with a sum not exceeding five thousand dollars, which, together with ten per cent. premium on the same, and cost of insurance on such premium and advance, is to be considered in part payment of the freight, the cap-

tain's receipt to be binding on the owners. And should the charterers or their agents think fit to advance any further sum on the credit of the freight for repairs, stores and disbursements, such sums, with premium, interest, commissions, and insurance, to be considered in part payment of freight to the master, the captain's receipt for which is to be binding on the owners. A part of the freight, not exceeding one-third, at the option of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo, by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignees; the captain to grant a receipt in triplicate for the amount of freight when settled, stating also the number of tons of guano delivered.

The captain to sign bills of lading without reference to rate of freight, and without prejudice to this Charter Party.

The ship to be consigned to F. Barreda & Brother, or their agents at Callao, and at the port of discharge, who will charge, in the first place, one hundred and fifty dollars, and, in the second, five per cent. on the freight for managing the ship's business. And if, for any unforeseen event, the vessel shall proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of F. Barreda & Brother (paying the usual commissions), who shall perform all the business belonging to the ship.

Said agents are, at St. Thomas, Messrs. Pretto & Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso, or ports of Chili, Jose Cerveró, Esq., or their agents, and in other ports, those who are, or may be, authorized by Messrs. F. Barreda & Brother.

The ship to find necessary dunnage.

The owners to be liable for all damages arising from side lights and ports.

The ship to be at Callao, ready to load in the course of February, 1855, or before, under the penalty hereinafter mentioned. Penalty for non-performance of this Charter Party, ten thousand dollars, which amount is fixed as indemnification of prejudices, caused by the party delinquent to the party observant: political or other extraordinary circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers and navigation, of whatever nature and kind soever, during the said voyage, always excepted.

It is further agreed, that within one week from the date hereof, the owners of said vessel may, if they see fit, elect to dispatch her direct to Callao and the Chincha Islands, to load as heretofore provided, and in case said owners shall so elect, the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her such outward cargo, not exceeding two hundred tons, as they may desire; provided they shall do so within ten days after the owners shall have announced their said election. The charterers, on the arrival of the vessel at the

home port, to pay, in full satisfaction of such earnings and privilege, and of all outward freight, such gross sum as shall be equivalent to five dollars per ton on the return cargo delivered. It is also agreed, that the vessel, when loaded, will draw 20 feet, without regard to the clause restricting her to one-third over her register tonnage.

J. J. FISHER & SONS.

Witness to the signature of J. J. Fisher and Sons,
DANIEL WARFIELD.

Pp. F. BARREDA & BRO.
W. BARRIL.

Witness to the signature of Barreda & Bro.,
P. A. HELGUIRO.

The vessel was then on her voyage from Liverpool to Baltimore. She was to be at the islands in February, 1855. Witness had no particular conversation with the defendants, in regard to the form of the Charter Party. His father having been for some time the Peruvian Consul, he had frequently seen them, and knew all about them.

The owners had in contemplation no voyage to a port in the Indian or Pacific Ocean, before going to Callao. They intended the ship to go direct to Callao. The defendants had the privilege of shipping two hundred tons of cargo to Callao, and attempted to execute it by shipping two iron boilers for Callao, but the boilers were so large that they could not be got into the vessel's hold, and witness' house refused to take them as a deck load, insisting that they would render the voyage dangerous, and that, under the Charter Party, the vessel was not bound to take the two hundred tons provided for, in the shape of a deck load.

The defendants contended that they had a right to ship the boilers as a deck load, but after some time, the two houses being on friendly terms, the matter was compromised by cancelling the charter party, and the voyage was not performed.

The witness stated, that the peculiar form of the Charty Party in question, commenced being used shortly after Mr. Frederick L. Barreda established himself in Baltimore. He further proved, that an average voyage from Baltimore to Callao occupies about four months. The voyage to Australia is longer, and from Baltimore to San Francisco, occupies from one hundred and thirty to one hundred and fifty days.

Evidence of Zenos D. Bassett, Jr., witness for Pl'ffs.

The plaintiffs then proved by Zenos D. Bassett, Jr., of New York (whose testimony was likewise taken, subject to all legal and proper exception), that he was a member of the house of Bassett, Bacon & Co., of New York, and that said firm, on or about the 28th of June, 1854, chartered the ship Antelope, of Boston, to the defendants, for

a voyage from New York to Callao, to be in Callao in the month of January, 1855, or before, thence to the Chincha Islands, and back to Hampton Roads. The witness produced said Charter Party.

Charter Party. Ship Antelope.

Charter Party. NEW YORK, *June* 28th, 1854.

It is hereby mutually agreed between Messrs. Bassett, Bacon & Co., owners and agents of the ship Antelope, five hundred tons register measurement, now in the port of New York, on the one part, and F. Barreda & Brother, acting as agents for the Peruvian Government, on the other part, as follows:—

The said vessel shall proceed direct to Callao, from New York, and being tight, staunch and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands to take in her cargo.

After completing her loading of guano, the vessel to proceed direct to her destination.

A full cargo of guano, not to exceed one-third above her register tonnage (unless otherwise agreed) to be furnished to the ship.

At the Chincha Islands, the vessel to be placed under the Mangueras to load, or at the option of the charterers, the cargo to be placed in the ship's or charterers' boats to be conveyed on board, at ship's expense and shippers' risk.

Fifty-five running days to be allowed to the charterers for loading the ship at the islands, to commence from the day the master gives notice in writing, of being ready to receive and take on board, and to cease when the charterers' agents give notice that she is to receive no more cargo; and ten days to be allowed the master for taking in light freight and specie, as above specified, with all days on demurrage in either case (if required) to be paid for at the rate of seventy-five dollars per day from the party delinquent to the party observant.

The ship shall convey any specie that may be required for the payment of cargo, and any tools, and bags for dunnage, free of freight; and must deliver free of charge, either on board or alongside, any water that may be required at the guano ports, not exceeding five tons.

The crew to sew up the mouths of the sacks, if required, free of expense, the charterers providing twine; the sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborer's daily pay while so employed.

The owners of the vessel to pay all port charges.

The said vessel shall, after completing her loading as before-mentioned, proceed to Hampton Roads, where she is to remain until re-

turn of post, to receive from F. Barreda & Brother, from Baltimore, or their agents, to discharge in any safe port of sea or rivers, between Hampton Roads and Cape Ann, there according to bills of lading deliver her cargo, which is to be discharged and taken from alongside, as fast as the custom of the port to which she may be ordered will permit; the consignee having the liberty of naming the dock or wharf at which the cargo is to be landed.

The freight to be paid as under, at the rate of twenty-five dollars in full, per ton of 20 cwt. net guano, custom-house weights. In calculating the freight, the proper, percentage of water on all that turns out damaged, to be deducted. The master, if required, to be supplied in Callao with a sum not exceeding six thousand dollars, which, together with ten per cent. premium on the same, and cost of insurance on premium and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners. And should the charterers, or their agents, think fit to advance any further sum on the credit of the freight, for repairs, stores, and disbursements, such sums with premium, interest, commission and insurance, to be considered in part payment of freight to the master, the captain's receipt for which is to be binding on the owners. A part of the freight, not exceeding one-third, at the option of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo, by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignee; the captain to grant a receipt in triplicate for the amount of freight when settled, stating also the number of tons of guano delivered. The captain to sign bills of lading without reference to the rate of freight, and without prejudice to this charty party.

The ship to be consigned to F. Barreda & Brother, or their agents at Callao, and at the port of discharge, who will charge in the first place one hundred and fifty dollars, and in the second, five per cent. on the freight, for managing the ship's business. And if for any unforeseen event, the vessel shall proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of F. Barreda & Brother (paying usual commissions), who shall perform all the business belonging to the ship. Said agents are, at St. Thomas, Messrs. Pretto and Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso, or Ports of Chili, Jose Cevero, Esq., or their agents; and in other ports those who are or may be authorized by Messrs. Barreda & Brother.

The ship to find necessary dunnage.

The owners are to be liable for all damages arising from side lights and ports.

The ship to be at Callao ready to load in the course of January, 1855, or before, under the penalty hereafter mentioned. Penalty for non-performance of this charter party, five thousand dollars,

which amount is fixed as indemnification for prejudices caused by the party delinquent to the party observant. Political, or other extraordinary and unforeseen circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers, and navigation of whatever nature and kind soever, during the said voyage, always excepted. It is further agreed that in one week from the date hereof, the owners of said vessel may if they see fit, elect to dispatch her direct to Callao and the Chincha Islands to load as hereintofore provided; and in case said owners shall so elect, the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her such outward cargo not exceeding two hundred tons, as they may desire; provided they shall do so within ten days after the owners shall have announced their said election. The charterers, on the arrival of the vessel at the home port, to pay, in full satisfaction of such earnings and privilege and of all outward freight, such gross sum as shall be equivalent to five dollars per ton on the return cargo delivered.

Pp. J. BARREDA & BRO.

Witness,
J. HOWARD.

W. BARRIL.
BASSETT, BACON, & CO.

Witness,
HENRY E. NESMITH.

The Antelope brought her cargo to New York, and discharged it, and received thirty dollars ($30) per ton on amount of cargo delivered. The owners had the privilege given them by the charter to proceed direct to Callao, but no indirect voyage was contemplated by them.

It was understood when the charter was executed, that the vessel could proceed direct. The charter was negotiated through Messrs. Nesmith & Sons of New York, shipping brokers and commission merchants, who acted for the charterers. The offer made to us by them was thirty dollars ($30) to fetch a ton of guano from the Chincha Islands, and it was understood that we were to make thirty dollars a ton on the guano brought home by the ship. When the charter was presented to the witness for signature as it now stands, the witness objected to the clause in writing at the end of the charter, in regard to sending out merchandise by the ship, but Nesmith replied that there would be no cargo sent out, and that the charter party was drawn in that form, so as not to conflict with former charter parties, which provided for a freight of twenty-five dollars per ton, with the benefit of a rise.

Witness then sent on to Boston to his co-owners for authority to close the contract, informing them of the terms of the charter. The production of the letter being called for by the defendants' counsel, it is produced and read to the jury by the plaintiffs.

Letter from Bassett, Bacon & Co., to Lincoln, Wing & Co.

NEW YORK, *June* 4, 1856.

Messrs. LINCOLN, WING & Co.,

Gent'n: Enclosed please find Mr. Sutton's statement in writing the best he will do; the guano direct. Mr. Nesmith says the clause in regard to m'dse cannot be altered; but he knows there is not any goods to be shipped, and it is put in to clear them from charters already made in regard to ships chartered for $25, with the privilege of the rise. We think she will make the most money direct, as it will make 3 months' difference time in passages, 1 month's time here, stevedore's bill, extra wages, &c. However, you can judge best; there is a freight here for west coast America, provided the person can purchase the goods; he will know in a day or two.

Yours truly,

BASSETT, BACON & CO.

Witness was then authorized to close the contract, and the charter party was signed and sent on to Baltimore for approval to the defendants, it being made subject to their approval, when it was returned executed by the Messrs. Barreda.

Nesmith & Sons informed witness there was no cargo to be sent out, and that the vessel might go as soon as she was ready. The vessel was not advertised or put up for freight, and no freight was offered us by the defendants.

The ship proceeded to Callao in ballast direct. Witness further stated that a voyage from Milbourne to Callao will occupy, on an average, from forty-five to sixty days; that there is a difference of from thirty to forty-five days between a voyage from the United States to Callao, and one from the same to San Francisco. It takes, usually, from forty-five to seventy days for a voyage from San Francisco to Callao. Guano was selling at retail at that time at from fifty to sixty dollars per ton.

Cross-examined.

And the said Bassett being cross-examined stated, that at the time of executing the said charter party he had read it, and was aware of its contents; and that it was not executed until after his said letter to his co-owners had been written, and they had answered, authorizing Bassett, Bacon & Co., to make the charter.

Witness knew at the time that the owners might have made a charter to send the ship out indirectly; but he thought, as stated in his letter, that she would make more by going direct under the charter than by an indirect voyage at twenty-five dollars per ton. There was a freight then offering for San Francisco and the west coast, but the witness thought the direct voyage at thirty dollars preferable. In the charter party as made there was no right in the owners to elect an indirect voyage. The witness further stated that he would rather

have taken out a cargo of two hundred tons to Callao, than have bought ballast, and that guano, at the time of the contract, was worth about sixty dollars per ton in the market.

And thereupon the plaintiffs (subject to the same exception) offered in evidence (produced by the defendants on notice from the plaintiffs to produce all the charter parties containing the stipulation of $25 per ton freight, with $5 additional), the charter parties here described, viz:—

The charter party of the ship "Fanuil Hall," then lying in the port of New York, dated June 3d, 1854, to proceed to Callao direct from New York, and to be at Callao to load in the course of January, 1855, or before.

The charter party of the ship "E. Bulkley," then lying in the port of New York, dated June 20th, 1854, to proceed to Callao direct, and to be at Callao in the course of January, 1855, or before.

The charter party of the ship "Charles Traid," dated New York, July 6th, 1854, the ship then lying in said port, and to proceed direct to Callao, to be at Callao in the course of January, 1855, or before.

And the charter party of the ship "James Town," executed at New York, July 7th, 1854, the said ship then lying in said port, to proceed direct to Callao, and to be at Callao to load in the course of January, 1855, or before.

All of which charter parties were negotiated through the house of Nesmith & Son, of New York, and signed by the defendants as well as the parties representing said ships respectively.

And the plaintiffs likewise offered in evidence (subject to the same exception) the charter parties (likewise produced on notice from the plaintiffs as aforesaid by the defendants).

Of the ship Navigators, dated June 5th, 1854.
The ship Horatio, dated June 5, 1854.
The ship Havara, dated June 15, 1854.
The ship Gladiator, dated June 20, 1854.
The ship Lanark, dated June 29, 1854.
The ship Kate Hunter, dated June 29, 1854.
The barque Albus, dated July 10, 1854.
The ship Meteor, dated July 13, 1854.
The ship Monterey, dated July 15, 1854.

All of which charter parties were executed in Boston through the house of Vernon Brown & Son, shipping brokers, and were signed by the defendants themselves, as well as by the parties respectively interested in the ownership of said vessel, and all of which vessels so chartered were at the dates of said charters lying in North Atlantic ports of the United States, and were so chartered to proceed "to Callao from a port in the Indian or Pacific Ocean," and to be at Callao to load in the course of January, 1855, or before.

And all of the charter parties so offered in evidence, as well as those executed at New York, as those executed at Boston, provided

for a freight of twenty-five dollars per ton of guano, but contains likewise the clause following, which was in print in some of them, and in manuscript in others.

Extract from the Charter of the Ship Antelope.

"It is further agreed that within one week from the date hereof, the owners of said vessel may if they see fit, to dispatch her direct to Callao and the Chincha Islands to load, as hereintofore provided; and in case said owners shall so elect, the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her such outward cargo, not exceeding two hundred tons as they may desire: provided, they shall do so within ten days after the owners shall have announced their said election. The charterers on the arrival of the vessel at the home port to pay in full satisfaction of such earnings and privilege, and of all outward freight, such gross sum as shall be equivalent to five dollars per ton on the return cargo delivered."

And all of the said vessels were obliged by the said charters, after completing their loading at the Chincha Islands, to proceed to Hampton Roads for orders.

And the plaintiffs then further offered in evidence (subject to the same exception as hereinbefore stated), the charter parties here described (produced by the defendants) on notice, viz:

That of the ship Chrystal Palace, at Boston, loading for Australia dated April 11th, 1854.

That of the ship Bay State, at New York, loading for California, dated April 26th, 1854.

That of the ship John Cummings, supposed to be at New Orleans, or on the passage from New Orleans to Liverpool, dated April 28th, 1854.

That of the ship Moses Wheeler, at Boston, bound to California, dated May 2d, 1854.

That of the ship Morning Star, at Boston, loading for California, dated 2d May, 1854.

That of the ship Gertrude, at New Bedford, to load at New York for Australia, dated May 22d, 1854.

And that of the ship John Caskie, then on the passage from New York to Honololu, dated May 3d, 1854.

All of which charter parties were identical in their terms and conditions, as well in the freight of twenty-five dollars contracted to be paid, and the clause giving the benefit of a rise in freight, with the charter party of the Shirley hereinbefore inserted, except that the Chrystal Palace was required to be at the islands in the course of February and March, 1855, or sooner. The Moses Wheeler in March and April, 1855, or sooner, with the privilege of going to Callao, *via* Europe and intermediate ports, in lieu of California direct (should the owners desire), in which case the time of her arrival

was extended to August or September, 1855. The Morning Star was required to be at Callao in the course of March and April, 1855, or sooner; and the Gertrude in February and March, 1855, or sooner.

And all of the said charter parties were executed by the defendants personally, and the parties representing the respective vessels chartered, and are described in this bill of exceptions as are the other charter parties last aforementioned, instead of being inserted at length, to avoid unnecessary incumbrance of the record, and by the consent of the respective counsel and the court.

And the plaintiffs (subject to the same exception as hereinbefore mentioned) then proved that the defendants having been called on by the several parties interested in the said several vessels last named, and in the other vessels before named in this bill of exceptions, in the charters whereof was contained the said clause contained as aforesaid in the charter party of the Shirley, giving the said vessels the benefit of an advance in guano freights as by the same appears, to pay to the said parties additional freights over and above the sum of twenty-five dollars per ton, in said charters stipulated to be paid, upon the ground that there had been an advance in guano freights above the sum of twenty-five dollars per ton, within the meaning of said clause, they the said defendants wrote letters to each of the said parties so claiming, in which they denied that there had been any such advance, and that said parties or any of them were entitled to any such additional freights, but promised that in case it should be decided by competent judicial authority that they were bound to pay an advance freight under any charter having the said clause of advance, they would put all the vessels chartered with such clause of advance on the same and equal footing. And the insertion of the said correspondence in this bill of exceptions is waived (for the reason before given), by consent of the respective counsel, with the approbation of the court.

(And the plaintiffs likewise read to the jury subject to exception the deposition of the witnesses, Parsons, Trateman, Emmons, and Thaxter referred to in the court's third instruction, but the same having been by the court excluded from the consideration of the jury, are not here inserted.)

And the plaintiffs having closed the testimony upon their part, the defendants to main the issue upon their part joined, read to the jury the deposition following of Benjamin Bangs.

Deposition of Benjamin Bangs, witness for defendants, taken before C. W. Loring, Esq., U. S. Com. for the District of Massachusetts at the City of Boston, on the third day of November, 1856.

UNITED STATES OF AMERICA,
District of Massachusetts.

On this third day of November, A. D., eighteen hundred and fifty-six, before Caleb William Loring, a commissioner duly appointed by

the Circuit Court of the United States of the district aforesaid, under and by virtue of the laws of the United States, authorizing the appointment of commissioners for the taking of affidavits and bail, and for other purposes, personally appeared at my office, No. 39, in Court Street, Boston, in said District of Massachusetts, Benjamin Bangs, of Boston, in said district, merchant, a witness on the part of the defendants, in an action on the case pending in the courts of the United States for the Fourth Circuit in and for Maryland District, in which Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George F. Sanders, and William D. Pickman are plaintiffs, and Frederick L. Barreda and Philip Barreda are defendants. And the said Benjamin Bangs being first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, did depose and say in answer to the following direct interrogatories put by Joseph M. Bell, attorney for the defendants.

1st interrogatory. What is your name, and occupation, and how long have you pursued the same?

Answer. My name is Benjamin Bangs; I am a merchant; I have been a merchant about half a century.

2d interrogatory. Did you own the ship Cleopatra in 1854? If so, was she chartered to Messrs. Barreda & Bro's? If so, under what charter, and for what voyage, and annex the charter party? (Objected to.)

Answer. I did own the ship Cleopatra in 1854; she was chartered to Messrs. Barreda & Brothers; here is the charter that will show the charter and the voyage. (The charter is annexed to this deposition and marked by the magistrate *A*. (C. W. L.)

3d interrogatory. Where did said vessel go under said charter, and give the reason why? (Objected.)

Answer. She went to California, from there to the Chincha Islands, for a cargo of guano, and from the Chincha Islands to a port in the United States. Upon my word, I cannot say what was the reason why; the charter party will show. As near as I can recollect the first agreement was that she was to go to Callao direct at thirty dollars a ton. I think so. The charter party is all that I recollect now. Afterwards the time was extended.

4th interrogatory. Under that charter party had you or not, the right to choose a direct voyage, or an indirect voyage, and did you not choose an indirect voyage? (Objected.)

Answer. The first agreement was to go a direct voyage at thirty dollars. Afterwards I altered my mind and concluded to load her for San Francisco, and take the twenty-five dollars. I think it is so, but my memory is not very good, and I cannot say positively.

Cross-examined.

And to the following cross-interrogatories put by David Thaxter, attorney for the plaintiffs.

1st cross-interrogatory (put *de bene esse* if the direct interrogatories are competent).

You are not now able to state from your recollection under what precise circumstances that charter was made, or what led you to take an indirect voyage, are you?

Answer. I cannot now say, I cannot recollect exactly, but that is my impression, that I could have taken my choice twenty-five indirect, thirty direct.

2d cross-interrogatory (*de bene esse* as the last). How much longer time was given you to receive a load at Callao by the extension mentioned in the written clause under date of July 17, 1854?

Answer. The difference between January and July, something like six months.

3d cross-interrogatory (*de bene esse* as before). When did your ship sail from here?

Answer. I couldn't tell without referring to some of my papers; I will examine and see. Upon examination I find it is November 14, 1855.

BENJAMIN BANGS.

UNITED STATES OF AMERICA,
District of Massachusetts.

I, Caleb William Loring, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, in the First Circuit, under and by virtue of the laws of the United States, authorizing the appointment of commissioners for the taking of affidavits and bail and other purposes, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the said Bangs is a necessary and material witness in the cause in the caption of said deposition named, and that he lives in Boston in said Massachusetts District, and more than one hundred miles, and the place of taking the deposition is more than one hundred miles from the place of trial of said cause.

I further certify that the said defendants were present during the examination of said witness by their attorney, Joseph M. Bell, and that notice of the taking of said deposition was served on the plaintiffs' attorneys in the city of Baltimore, as will appear by the notice annexed to Thacher Magorn's deposition herewith returned, and that the plaintiffs appeared and were present during the taking of said deposition by David Thaxter.

And I further certify that, on the twenty-eighth day of October, and by adjournment on the third day of November in the year eighteen hundred and fifty-six, I was attended by the said Bangs the said witness, who is of sound mind and lawful age, and the said Bangs having been by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and in the cause aforesaid did answer to the interrogatories and cross-interrogatories put to him, and the testimony given by

him was by me reduced to writing in his presence, and thereafterwards subscribed by him as and for his deposition in my presence. I have retained the said deposition in my possession for the purpose of sealing the same and depositing it in the post office in said Boston, the same with my own hand directed to the said Circuit Court for the Fourth Circuit in and for Maryland District.

And I do further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto put my hand and seal this fifth day of November, A. D. 1856.

C. W. LORING,
U. S. Com'r.

Charter Party, Ship Cleopatra.

Charter Party. BOSTON, *July* 5, 1854.

It is hereby mutually agreed between Benjamin Bangs, owner of the ship Cleopatra, fifteen hundred and sixty tons, register measurement, now at New York, on the one part, and F. Barreda & Brother, acting as agents for the Peruvian Government, on the other part, as follows:—

That the said vessel shall proceed to Callao from a port in the Indian or Pacific Ocean, where she is at present bound, and being tight, staunch, and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands to take in her cargo.

After completing her loading of guano, the vessel to proceed direct to her destination.

A full cargo of guano, not to exceed one-third above her register tonnage (unless otherwise agreed) to be furnished to the ship.

At the Chincha Islands, the vessel to be placed under the Mangueras to load, or, at the option of the charterers, the cargo to be placed in the ship's or charterers' boats, and in them conveyed on board, at ship's expense and shipper's risk.

One hundred running days to be allowed to the charterers for loading the ship at the Chincha Islands, to commence on the day the master gives notice, in writing, of being ready to receive and take on board, and to cease when the charterers' agents give notice that she is to receive no more cargo; to be paid for at the rate of two hundred dollars per day from the party delinquent to the party observant. The ship shall convey any specie that may be required for the payment of cargo, and any tools and bags for dunnage free of freight, and must be delivered free of charge, either on board or alongside any water that may be required at the guano ports, not exceeding five tons.

The crew to sew up the mouths of the sacs if required, free of ex-

pense, the charterers providing the twine; the sacks must be filled with guano, and used for lining the vessel; and should political or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborers' daily pay while so employed.

The owners of the vessel to pay all port charges.

The vessel shall, after completing her loading as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barreda & Brother, from Baltimore, or their agents, to discharge in any safe port of sea or river in the United States, not south of Hampton Roads, or north of Cape Ann, and there, according to bills of lading, deliver her cargo, which is to be discharged and taken from alongside as fast as the custom of the port to which she may be ordered will permit; the consignee having the liberty of naming the dock or wharf at which the cargo is to be landed.

The freight to be paid as under, at the rate of ($25) twenty-five dollars in full, per ton of 20 cwt. net of guano, custom-house weights. In calculating the freight, the proper percentage of water on all that turns out damaged is to be deducted.

The master, if required, to be supplied at Callao with a sum not exceeding eight thousand dollars, which, together with ten per cent. premium on the same, and the cost of insurance on said premium and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners. And should the charterers or their agents think fit to advance any further sum on the credit of the freight, for repairs, stores, and disbursements, such sums, with premium, interest, commission and insurance, to be considered in part payment of freight to the master, the captain's receipt for which is to be binding on the owners. A part of the freight, not exceeding one-third, at the option of the charterers, is to be paid on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo, by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignee; the captain to grant a receipt in triplicate for the amount of freight, when settled, stating also the number of tons of guano delivered.

The captain to sign bills of lading without reference to the rate of freight, and without prejudice to this charter party.

The ship to be consigned to F. Barreda & Brother, or their agents at Callao, and at the ports of discharge, who will charge in the first place one hundred and fifty dollars, and in the second five per cent. on the freight, for managing the ship's business. And if for any unforeseen event the vessel should proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or

agents of F. Barreda & Brother (paying the usual commissions), who shall perform all the business belonging to the ship.

Said agents are, at St. Thomas's, Messrs. Pretto & Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso, or ports of Chili, Jose Cerveró, Esq., or his agents; and in other ports, those who are or may be authorized by Messrs. F. Barreda & Brother.

The ship to find necessary dunnage.

The owners to be liable for all damages arising from side lights and ports.

The ship to be at Callao, ready to load in the course of January, 1855, or before, under penalty hereafter mentioned. Penalty for non-performance of this charter-party, fifteen thousand dollars, which amount is fixed as indemnification of prejudices caused by the party delinquent to the party observant; political or other extraordinary circumstances, the act of God, enemies, fire, and all and every other dangers of the seas, rivers, and navigation of whatever nature and kind soever during the said voyage, always excepted.

"It is further agreed, that within one week from the date hereof, the owners of said vessel may, if they see fit, elect to dispatch her direct to Callao and the Chincha Islands, to load as hereintofore provided; and in case said owner shall so elect, the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her, such outward cargo, not exceeding two hundred tons as they may desire: Provided, they shall do so within ten days after the owners shall have announced their said election. The charterers, on the arrival of the vessel at the home port, to pay in full satisfaction of such earnings and privilege, and of all outward freight, such gross sum as shall be equivalent to five dollars per ton on the return cargo delivered.

BENJAMIN BANGS.

Witness to the signature of B. Bangs,
V. H. Brown.

Pp. F. BARREDA & BRO.,
W. BAMIL.

Witness to the signature of W. Barril.

Boston, *July* 17, 1854.

The owners of above vessel decide to send her indirect to Callao, at twenty-five dollars per ton; the time of arrival being extended to July and August, 1855.

F. BARREDA & BROTHER.

Vernon Brown & Son,
Brokers.

Evidence of Henry E. Nesmith, witness for defendants.

And the defendants then further proved by Henry E. Nesmith, of the City of Brooklyn, that he is a member of the house of Nesmith & Sons of said City, ship owners and commission merchants in the City of New York; that said house is composed of the witness and James Nesmith, and James J. Nesmith, and that they were at the time of the making of the charter parties hereinbefore inserted and referred to, the agents of the defendants in the City of New York, for the negotiation of charter parties in the Guano trade. The witness further stated, that he had heard the testimony of the witness Zeno D. Bassett, Jr., examined on behalf of the plaintiffs; that he (the witness), had had several conversations with Mr. Bassett at the time of making the charter party of the ship Antelope, but he thinks Mr. Bassett made an incorrect statement in regard to them. He may have said that the form of charters was not to conflict with home charters, but he did not use the words put into his mouth by Mr. Bassett, nor did he state, nor was he authorized by the defendants in any way to state that the clause of the charter party spoken of by Mr. Bassett, or any part of the same was inserted for the purpose of clearing the defendants from former charter parties containing a clause for an advance in freight, or to prevent the said charter of the Antelope from conflicting with any former charter parties.

The said house of Nesmith & Sons negotiated the charter party of the Antelope, as they did all the other charter parties negotiated by them, and containing similar provisions, by virtue of an express written authority from the defendants, contained in a letter from the defendants, dated June 1st, 1854, in which was enclosed a *pro forma* charter party.

The witness then produced the said letter and *pro forma* charter party, which are as follows:—

Letter from F. Barreda & Brother to Nesmith & Sons, dated Baltimore, 1st June, 1854.

BALTIMORE, *1st June*, 1854.

MESSRS. NESMITH & SONS, New York. Gent.: We enclose a *pro forma* charter party for vessels out and home, and you are hereby authorized to take up as many as you can without allowing the least deviation from its terms. You will notice that we are prepared to engage only vessels to be at Callao in January next, or before, but not afterwards, you will keep former rates without benefit of advance for home charters.

Your obed't serv'ts,

F. BARREDA & BROTHER.

Pro-forma Charter Party.

Charter Party. NEW YORK, *June*, 1854.

It is hereby mutually agreed between A. & B., owners of the ship C. D., one thousand tons register measurement, now in the port of New York, on the one part, and F. Barreda & Brother, acting as agents for the Peruvian Government, on the other part, as follows:—

That the said vessel shall proceed to Callao from a port in the Indian or Pacific Ocean, where she is at present bound, and being tight, staunch, and strong, and in every way fitted for the voyage, shall proceed with all convenient dispatch to the Chincha Islands to take in her cargo.

After completing her loading of guano, the vessel will proceed direct to her destination.

A full cargo of guano, not to exceed one-third above the register tonnage (unless otherwise agreed), to be furnished to the ship.

At the Chincha Islands, the vessel to be placed under the mangueras to load, or at the option of the charterers the cargo to be placed in the ship's or charterers' boats, and in them conveyed on board at ship's expense, and shippers' risk.

Ninety running days to be allowed to the charterers for loading the ship at the Islands, to commence from the day the master gives notice in writing of being ready to receive and take on board, and to cease when the charterers' agents give notice that she is to receive no more cargo; and ten days to be allowed the master for taking in light freight and specie, as above specified, with all days on demurrage, in either case (if required), to be paid for at the rate of one hundred and twenty-five dollars per day, from the party delinquent to the party observant. The ship shall convey any specie that may be required for the payment of cargo, and tools, and bags for dunnage free of freight; and must deliver free of charge, either on board or alongside any water that may be required at the guano ports, not exceeding five tons.

The crew to sew up the mouths of the sacks, if required, free of expense, the charterers providing twine; the sacks must be filled with guano, and used for lining the vessel; and should political, or other circumstances prevent there being sufficient laborers at the loading places, the captain agrees to send part of his crew on shore to load the cargo, they receiving the usual laborer's daily pay while so employed.

The owners of the vessel to pay all port charges.

The said vessel shall, after completing her loading as before mentioned, proceed to Hampton Roads, where she is to remain until return of post, to receive orders from F. Barredo & Brother, from Baltimore, or their agents, to discharge in any safe port of sea or river in the United States, not south of Hampton Roads, nor north of Cape Ann, and there, according to bills of lading, deliver her

cargo, which is to be discharged and taken from alongside, as fast as the custom of the port to which she may be ordered will permit: the consignee having the liberty of naming the dock or wharf at which the cargo is to be landed.

The freight to be paid as under, at the rate of twenty-five ($25) dollars in full, per ton of 20 cwt. net of guano, custom-house weight. In calculating the freight, the proper percentage of water on all that turns out damaged to be deducted.

The master, if required, to be supplied in Callao with a sum not exceeding six thousand dollars, which, together with ten per cent. premium on the same, and cost of insurance on such premium and advance, is to be considered in part payment of the freight, the captain's receipt to be binding on the owners. And should the charterers, or their agent, think fit to advance any further sum on the credit of the freight, for repairs, stores and disbursements, such sums with premium, interest, commission and insurance, to be considered in part payment of freight to the master, the captain's receipt for which is to be binding on the owners. A part of the freight not exceeding one-third, at the option of the charterers, is to be paid, on arrival at the port of discharge, two months' interest being deducted, and the balance to be paid on the true and right delivery of the cargo, by approved bills at two months' date, or in cash, less the usual discount, at the option of the consignee, the captain to grant a receipt in triplicate for the amount of freight, when settled, stating also, the number of tons of guano delivered.

The captain to sign bills of lading without reference to the rate of freight, and without prejudice to this charter party.

The ship to be consigned to F. Barreda & Brother, or their agents, at Callao, and at the port of discharge, who will charge in the first place one hundred and fifty dollars, and in the second, five per cent. on the freight, for managing the ship's business. And if, for any unforeseen event the vessel shall proceed to any port or ports along the Pacific or Atlantic coast, or any of its islands, to repair damages, &c. &c., the captain to be obliged to consign her to the agent or agents of F. Barreda & Brother (having usual commissions), who shall perform all the business belonging to the ship. Said agents are, at St. Thomas, Messrs. Pretto & Aldecoa; at Rio Janeiro, Messrs. Naylor, Brothers & Co.; at Valparaiso, or ports of Chili, Jose Cerveró, Esq., or their agents; and in other ports, those who are or may be authorized by Messrs. Barreda & Brother.

The ship to find necessary dunnage.

The owners to be liable for all damages arising from side-lights and ports.

The ship to be at Callao, ready to load, in the course of January, 1855, or before, under the penalty hereafter mentioned. Penalty for non-performance of this charter party, twelve thousand dollars, which amount is fixed as indemnification of prejudices caused by the party delinquent to the party observant; political or other extraordinary and unforeseen circumstances, the act of God, enemies, fire,

and all and every other dangers of the seas, rivers and navigation, of whatever nature and kind soever during the said voyage, always excepted.

It is further agreed that, within one week from the date hereof, the owners of said vessel may, if they see fit, elect to dispatch her direct to Callao and the Chincha Islands, to load, as hereintofore provided: and in case said owners shall so elect, the charterers shall be entitled to all her earnings for such outward voyage, and shall further have the privilege of shipping by her such outward cargo, not exceeding two hundred tons, as they may desire; provided they shall do so within ten days after the owners shall have announced their said election. The charterers, on the arrival of the vessel at the home port, to pay in full satisfaction for such earnings and privilege, and of all outward freight such gross sum as shall be equivalent to *five dollars* per ton on the return cargo delivered.

Other than this authority, the said Nesmith & Sons had none, direct or indirect, verbal or written, from the defendants upon the subject, and they had no communication or information from the defendants in any way, to the effect that they intended or desired to avoid any obligations they were already under through charters previously executed, or that the charters to be negotiated according to the *pro forma* charter just inserted herein, were framed or designed for any such purpose or for any purpose but the one expressed upon their face.

The said house of Nesmith & Sons were not authorized by the defendants to make any verbal arrangement, explanation, or stipulation varying the terms of the said charters or the rights of parties thereunder, nor did they make any such, but the said charter parties as executed contained the whole contract between the parties thereto.

By the general instructions of the defendants to Nesmith & Sons, all charter parties negotiated by Nesmith & Sons for the defendants, were subject to the revision and approbation of the defendants, after being executed by the ship owners or their agents, and were sent on to Baltimore to the defendants to be signed by them, if approved, and such was always the understanding of Nesmith & Sons with the parties with whom they negotiated.

The charter of the "Antelope" was so sent on, and was returned with the signature of defendants to it as drawn and executed, and was delivered as signed to Mr. Bassett.

Mr. Bassett, in his conversations with witness, before the said charter party was sent to the Messrs. Barreda to be executed, did object to the clause giving the Messrs. Barreda the right to ship two hundred tons of merchandise out to Callao, but the witness expressly informed Mr. Bassett that the charter party could not be altered in any particular; whereupon Mr. Bassett wrote to Boston for instructions, and upon receiving them, executed the charter party as drawn. After the said charter party was executed, the witness was

instructed by the defendants to inform Mr. Bassett that they had no cargo to send out by the ship, and she went out in ballast, accordingly, as soon as she was ready. And the defendants further proved by the said Nesmith, that his house had been for some time before, and continued after the negotiation of the charter parties aforementioned, as negotiated by said house, the agents of the defendants in New York, for the negotiation of charter parties for the transportation of guano, the exportation of which was a monopoly of the Peruvian government, in which individuals were not permitted to engage, from the Chincha Islands to the United States, and that the defendants, as agents of the Peruvian Government, were the only persons making such charter parties in the United States, and that the said witness was perfectly familiar with the rates of freight paid for such transportation by the defendants, and that the said witness did not know, and had never heard of any higher rate of freight than twenty-five dollars per ton paid, or contracted to be paid by the defendants for the transportation of guano from the Chincha Islands to the United States, in any vessels going indirectly to the Chincha Islands, that is to say, carrying out cargo, or having carried out cargoes on their own accounts, to ports in the Pacific or Indian Ocean, and proceeding thence on their way homeward to the Chincha Islands, these being what are called "homeward charters" in defendants' letter of June 1, 1854.

Witness never knew of any vessels receiving at the rate of more than twenty-five dollars per ton of guano delivered, either before or since the date of the Shirley's charter party, except the vessels electing to go out to Callao and the Chincha Islands direct, under charter parties, containing the final clause embraced in the charter party of the Antelope.

In saying that he knew of no freights higher than twenty-five dollars, the witness explained that he referred to vessels which by their charters were required to report themselves on the return voyage at Hampton Roads for orders, as in the case of the Shirley. Some of the vessels chartered by defendants were required to proceed to St. Thomas' for orders, in which case they received from a dollar to a dollar and a half more per ton, they being subject to be sent to the southern ports of the United States from St. Thomas', while those ordered to Hampton were not, and the rates for vessels agreeing to go to the southern ports of the United States were always higher than those of vessels bound only to proceed to the ports north of the Capes of the Chesapeake.

At and before the date of the Shirley's charter, the defendants were paying twenty-six dollars and a half ($26 50) per ton for vessels, to report at St. Thomas', on indirect voyages like the Shirley's, and no higher rate was paid for any such afterwards.

And the witness further proved that under the instructions contained in the letter of the defendants of June 1st, 1854, herein before transcribed, Nesmith & Sons never paid, or offered to pay,

more than twenty-five dollars per ton for home charters, and the witness produced the charter party of the ship "Wings of the Morning" (the insertion of which in full in the record is waived by consent), dated at New York July 6, 1854, where said ship then was, to proceed from Australia, whither she was then bound, to Callao, and to be at Callao in the course of March, 1855, or before, freight twenty-five dollars per ton ($25), which charter party was negotiated at the time of its date by Nesmith & Sons in New York, being the same day on which they negotiated the charter party of the "Charles Ward," hereinbefore referred to as containing the additional five dollar clause, and the day before they negotiated the charter party of the "Defiance," containing a similar clause, she (the Defiance) and the "Wings of the Morning" both belonging to the same owners, and being the vessels referred to by the witness McCready in his deposition produced on the part of the plaintiffs.

And the defendants further proved, by the said Nesmith, that his said firm of Nesmith & Sons was very extensively engaged in the shipping business, and had, perhaps, more vessels afloat than any other house in New York, and that he, the witness, was perfectly familiar with the cost and expenses of navigating vessels, and that a vessel of the size of the Shirley, on a voyage from the United States to Callao, would, without reference to the contingencies of the voyage or to port charges, cost her owners from $800 to $900 per month. And the said Nesmith further proved that the commissions of the witness, as well as of the defendants, were paid by the ship owners on the amount of freight earned, and that it was the interest of the defendants, as well as the witness, to increase the amount of freight, and not diminish it.

Cross-examined.

And the said Nesmith, being cross-examined on the part of the plaintiffs, deposed that he did not know that Zenus D. Bassett might not have had some conversation, such as said Bassett had testified to, with the father of witness. He, the witness, did not know that said Bassett had conversed at all with the father of witness on the subject. Witness did not inform said Bassett or any other person of the precise extent of his authority, or show the letter of authority he had from the defendants. In Bassett's charter there was an alteration made from the *pro forma* charter party, so as to make the voyage direct from New York to Callao. Witness had no authority to strike out the words "from a port in the Indian or Pacific Ocean" so as to make the voyage direct from New York to Callao. He did so, because the party elected at the time of the charter to go direct. In all the charters made by the house of witness containing the $5 additional clause, the words "from a port in the Indian or Pacific Ocean" were stricken out, because in all those cases the parties elected to go direct before or at the time of executing the charters. At the time of making his charter Bassett asked the witness what the clause

of election at the end thereof meant, and witness told him he had already elected. The defendants did not load the Antelope under their privilege to send out two hundred tons. On the Defiance there were seven or eight cases of cigars shipped. The freight of these cigars might have been $50, more or less. These cigars were the only loading by the defendants for the outward voyage of vessels chartered by witness' house in New York under charters like the Antelope's. Witness' house were the sole agents of defendants in chartering vessels in New York. The defendants never, to witness' knowledge, put up for freight any of the vessels chartered by witness' house under charters with the clause of privilege last referred to. Upon being asked whether, as no cargo was sent out, and the vessels were not put up for freight, the privilege referred to could have been a profit to the defendants, the witness answered that it could not, but that the object of the defendants might have been to get vessels out to the Islands by a certain time to bring back guano, and the clause referred to would have accomplished that object.

Upon being further asked whether he could imagine the purpose of putting in the clause in question, if the defendants did not exercise the privilege which it gave them. He replied that he had no right to imagine the purpose of putting the clause in, and he did not know anything in regard to it beyond his orders. He further stated on enquiry, that he had never seen a similar clause to the one in question in any other charter parties.

Further examination of Z. Bassett for Pl't'ffs.

And thereupon the plaintiffs recalled Zenus D. Bassett, who deposed that the declarations made to him, and in regard to which he testified in chief as to the purpose of the final clause in the charter party of the Antelope, were made to him by Mr. James Nesmith & Sons, and not by the witness, Henry E. Nesmith. Whereupon the said Henry E. Nesmith being recalled, stated, that he had no knowledge of such declarations having been made by his said father, nor was he aware that said Bassett had ever conversed in regard to said charter with any member of said firm but himself (the witness), who negotiated and concluded it with him.

Evidence of Vernon Brown, witness for Defendants.

And the defendants further proved by Vernon Brown that he was a member of the firm of Vernon Brown & Son, of Boston, shipowners and shipping brokers by occupation, his partner being his son, Vernon H. Brown. That he knows the plaintiffs, the owners of the ship Shirley, and negotiated the charter of said ship with them for the defendants. That the plaintiffs were at that time largely engaged in the Amsterdam and East India trade. At the time of the Shirley's charter being negotiated, freights for Amsterdam, if the witness remembers right, were nominal, and there was not much going forward,

but he never knew them to be less than eight dollars per ton, or twenty cents per foot. Cargoes for Australia were generally assorted and valuable; such as flour, tobacco, cotton goods, fruits, liquors, &c. The Shirley went to Australia on a voyage for owners' account. And the said witness further proved that his firm were the agents of the defendants for the negotiation of guano charters in Boston during the whole period covered by the transactions already given in evidence. All the charter parties containing the five dollar additional clause, with the privilege of election, &c., which have been proven to have been executed in Boston, were negotiated by the house of witness. The authority of said house to act for the defendants in the premises, was in writing, and is contained in the letter of the defendants which the witness produces as follows:—

Letter from Barreda & Brother to Messrs. Brown & Sons.

BALTO., 1 *June*, 1854.

Messrs. VERNON BROWN & SONS, Boston.

Gent.: Yours of the 29th inst. is at hand. We return you charter party and letter of dispatch for ship Gitnide, hoping that this will be the last one with the claim for advance. We enclose a *pro forma* charter party for vessels out and home, and you are hereby authorized to proceed at once to take up vessels under its terms, and without allowing any deviation from the same; and you will observe we are not prepared to take vessels to arrive at Callao after January next. You will keep former rates without privilege of advance for home charters.

Your obed't servants,
F. BARREDA & BROTHER.

North Bend and Monterey are ordered to Balto.

The *pro forma* charter party therein contained was identical, in all particulars, with that produced by the witness, Nesmith, and hereinbefore inserted. The defendants never gave to Vernon Brown & Son, or to either member of the firm, any authority or instructions, direct or indirect, verbal or otherwise, on the subject of said charters, other than contained in said letter, and the said firm was not, nor was either of its members authorized to depart, in any particular, from such instructions, or to make any statements or declarations to any person varying the same in any wise or differing from what in said letter is directed.

The house of witness was to receive upon all charter parties negotiated by them a commission of two and a half per cent. upon freight earned to be paid by the ship. Vernon Brown & Son have never been paid their commission upon the freight earned by the Shirley on the voyage in controversy.

On or about the 11th January, 1856, witness sent to the plaintiffs his bill here produced:—

Account of Vernon Brown & Son.

Ship Shirley & Owners

To Vernon Brown & Son.

To commission on guano charter, Chinchas to Hampton Roads, &c.
T. cwt. qrs. lbs.

at $25 per ton, c. 2½ per cent.

dollars.

BOSTON, *January* 11, 1856,
Rec'd payment.

And on or about February 7th addressed the plaintiffs in regard to the payment of the same.

The plaintiffs sent them in reply their letter of February 8th.

(Copy.)

Letter from B. H. Silsbee to V. Brown & Son.

BOSTON, *February* 8, 1856.

Messrs. VERNON BROWN & SON:

Gentlemen: I am in receipt of your favor yesterday. We are ready to settle your comm'n on guano charter of ship *Shirley* when the freight is settled according to the terms and spirit of the charter party which should be $30 per ton. Inasmuch as that amount was paid for freight of guano prior to her loading. My agreement was in behalf of the owners of the ship to pay you a commission on the amount of freight earned or to that effect—but as this is a matter of dispute between the charterers (for whom you acted as agents) and ourselves. I don't see how we can decide at present what your commissions may amount to. Should you send us a bill for commissions on freight calculated at $30 per ton, we shall be disposed to settle it.

Yours, respec'y,

(Signed) B. H. SILSBEE,
For owners of ship Shirley.

And the house of witness rejoined in the letter following:—

Letter from Vernon Brown & Son to B. H. Silsbee.

Ship Shirley & Owners
to Vernon Brown & Son, *Dr.*

To commissions on guano charter, Chinchas to Hampton Roads for orders:—

1459. 4. 2. 11 at $25 is $36,480; 74 at 2½ per ct. is $912 02.

BOSTON, *February* 16, 1856.
Rec'd payment.

BOSTON, *February* 16, 1856.

B. H. SILSBEE, ESQ'R, TO SALEM:

Dear Sir: We are in receipt of your favor 8th inst, and take due note of the contents. Above please find our bill com'ns on 1459. 4. 2. 11 at $25 per ton, which is the correct amount of the Shirley's charter, and, according to the terms and spirit of the charter party, this is all we claim or consider ourselves entitled to, and we cannot think you wish to pay us *more* than our just dues. We are not aware of any ship chartered upon the same terms and under the same charter party as the "Shirley" having demanded or received over $25 per ton. We do not, therefore, see upon what grounds you ask or expect Mess. Barreda & Bro. to make an exception of your ship, and pay her $5 per ton more than any other. Asking your early attention to above bill,

We remain your obe'd. serv't,

VERNON BROWN & SON.

There the correspondence ceased.

The said witness also proved that in all cases a commission upon the amount of freight is likewise payable by the vessel to the defendants. And the said witness being inquired of in regard to the ship Judge Shaw, and the deposition of Matthew Cobb hereinbefore referred to, and produced on the part of the plaintiffs, deposed that he made no statement whatever to said Cobb, varying, or agreeing to vary, or giving up or waiving any of the terms and stipulations contained in the charter party of said ship Judge Shaw as produced; on the contrary, the witness expressly informed said Cobb that his orders were absolute as to the terms of said charter party, and that he was not authorized to dispense with any of them. And said Cobb applied frequently to witness for permission to ship part of a cargo out of said ship for his own account, but the witness told him that it could not be done, unless he was willing to accept the twenty-five dollars per ton, only. Said Cobb then applied for permission to ship on his own account enough to pay port charges, but the witness repeated to him, that he could not do so, unless he was willing to accept the twenty-five dollars freight in full.

And the defendants then offered in evidence nine charter parties, to wit:—

1. The charter of the barque Gallego, then at New York bound to Buenos Ayres, to proceed from Buenos Ayres to Callao, and to be at Callao in the course of February and March, 1855, or sooner, to load with guano and proceed to Hampton Roads for orders at a freight of $25 per ton, said charters bearing date at Boston, June 6, 1854.

2. The charter party of the ship Delhi then at Boston, to proceed from Panama whither she was then bound to Callao, and to be

at Callao to load guano in March or April, 1855, or sooner, to proceed to Hampton Roads for orders at a freight of $25 per ton, said charter dated at Boston, 19th June, 1854.

3. The charter party of the ship Osborn Howes, dated at Boston, July 5, 1854, where said ship was then lying, to proceed from California where she was then bound, to Callao, to be at Callao in the course of June or July, 1855, or before, and take home a cargo of guano to Hampton Roads for orders, at $25 a ton.

4. The charter party of the ship China, dated Boston, July 5, 1854, said ship then on her voyage from New York to California; to proceed from California to Callao, and be at Callao in February and March, 1855, or sooner, thence to Hampton Roads for orders with guano at $25 per ton.

5. The charter party of the ship Radiant, dated at Boston, July 5, 1854, said ship then on her passage from New York to Valparaiso, to proceed from Valparaiso to Callao, to load guano, and be at Callao, in January and February, 1855, or before, thence to Hampton Roads for orders at $25 per ton.

6. The charter party of the ship Wild Ranger, dated at Boston, July 16th, 1854, said ship then loading at New York for California to proceed from California to Callao to load guano, and be at Callao in May and June, 1855, or before, thence to Hampton Roads for orders at $25 per ton.

7. The Mary Glover, chartered at Boston, July 16th, 1854, said ship then on her passage from New York to Valparaiso, to proceed from Valparaiso to Callao to load guano, and be at Callao, in March and April, 1855, thence to Hampton Roads for orders at $25 per ton.

8. The ship Cairo, chartered at Boston, July 18th, 1854, she being then in Boston bound to California, to proceed from California to Callao, and be at Callao to load guano in April and May, 1855, or before, thence to Hampton Roads for orders at $25 per ton.

9. Ship Plymouth Rock, chartered at Boston, July 5th, 1854, she being then on her passage from New York to Panama, to proceed from Panama to Callao, to be at Callao in March and April, 1855, or sooner, thence to Hampton Roads for orders at $25 per ton.

And the defendants further proved by said Vernon Brown that he negotiated all of the said charter parties at their respective dates for the homeward freight at $25 per ton, and that he had never known or heard of any more than $25 per ton having been paid by the defendants, or contracted to be paid by them for freight for guano on the homeward voyage from the Chincha Islands to Hampton Roads, either before or after the charter of the Shirley; that $26 50 had been paid for vessels to report for orders at St. Thomas', both before and after the charter of the Shirley, and was being paid when she was chartered the first of said St. Thomas' charters at that rate, being that of the Star of the Morning, dated March 28th, 1854. The difference between reporting at St. Thomas and Hampton Roads was,

that the ships reporting at St. Thomas' were all subject to be ordered to southern ports at the sickly season, if necessary, and into the southern rivers; whereas those reporting at Hampton Roads could only be ordered to the large and accessible harbor or ports north of Hampton Roads, the difference was always $1 50 in the two classes of charters, and the St. Thomas charters were chiefly confined to smaller vessels.

And the said witness further proved that the owners of the ship Cleopatra, referred to by the witness Bangs in his deposition (said Bangs being such owner), chartered at Boston, July 5th, 1854, sent the said ship to San Francisco and brought home guano on the homeward voyage at $25 per ton, in preference to going direct and realizing $30 per ton, from the outward and homeward voyage under the final clause of the charter. At the request of Mr. Bangs the witness applied to the defendants to extend the time at which the Cleopatra was to load at Callao, beyond "January, 1855, or before, as stipulated in the charter party, and the defendants did so extend it to July or August, 1855.

Cross-examined.

And the said Vernon Brown being then cross-examined on the part of the plaintiffs, stated that down to the 1st day of June, 1854, the defendants had been taking vessels upon the same terms as the Shirley; that in May, 1854, he had been to Baltimore to see the defendants in relation to his agency, but received at that time no other authority than such as he previously had. The limitation which they then had was $25 per ton, with the clause of advance as in the Shirley's charter; the letter of June 1st, 1854, containing the *pro-forma* charter was the first instruction he received in regard to negotiating charters upon these terms, and before its receipt he never negotiated any similar charters. The clause for an advance contained in the Shirley's charter and others was inserted, because the owners supposed there might be an advance in freights. The witness further stated that he did not remember why the delay from the 8th to the 16th of February, 1856, occurred in his answering the letter of the plaintiffs in regard to his commission. His bill was originally sent to them on the 11th of January, 1856. It was left blank as to amount because he did not then know the amount of guano delivered by the ship. The witness said he was familiar with the course of the guano trade; it is much to the interest of the charterers to have the guano arrive in this country early in the spring or early in the summer, for the spring and fall trade. The object in having the vessels in Callao in January, was, that they might arrive here in the summer. All the charters were to be sent to the defendants to be signed by them before they became binding. The witness' house, as agents, had no authority to negotiate any except subject to the confirmation of the defendants, and all the ship owners were so informed in the negotiations. This was done in the case of Matthew Cobbs' ship, the Judge

Shaw. The words in their charters were, "from a port in the Indian or Pacific Ocean." They were inserted because the witness had no right to make a charter in other terms.

None of the parties told the witness that they were going to a port in the Indian or Pacific Ocean, nor were any of the ships put up for freight, nor was any cargo sent by them by the defendants. Witness had no right as Barreda's agent to send the vessel to any particular port, unless the owners had so requested it; the words "from a port in the Indian or Pacific Ocean" were inserted, because there was none other than the Indian or Pacific Ocean from which the voyages could have been made. Witness' agency commenced in 1852. His house had not negotiated many charters for defendants since August, 1854, and none since September, 1854, with a clause like that of the Judge Shaw.

Examination in chief resumed.

The examination in chief being resumed, the said Vernon Brown further stated, that although the defendants did not send out any freight by the vessels so chartered as aforesaid, they had the privilege of doing so if they pleased, and witness had no authority to waive their privilege, and did not in any case. There was no knowing what might happen. It made difference to the ships whether the defendants carried out cargo or not under the said charters. The owners were paid for the use of their vessels out, because they gave up the use of them to the defendants.

The sailing expenses of a vessel like the Shirley from Boston to Callao, would, he supposed, be from $550 to $900 per month, all expenses included, wear and tear, insurance, interest on capital, &c.; he supposes the voyage to Callao would cost from $6,000 to

It would have cost from $8,000 to $10,000 to the owners of the Shirley to charter a vessel like her for Australia at the time she went out to carry the cargo.

Cross-examined again.

And the said witness being again cross-examined stated, that it occupied about four months to Callao from Boston direct; that an indirect voyage by San Francisco would occupy four months longer, and an indirect voyage by Australia would occupy three months longer than the direct voyage to Callao. He likewise stated, on further examination in chief, that it would cost $750 insurance out to Callao on a vessel like the Shirley.

Evidence of John B. Fitzgerald, witness for Defendants.

And the defendants further to maintain the issue upon their part joined, proved by John B. Fitzgerald, that he was chief clerk of the house of the defendants, and had so been from the commencement of the guano business under their direction in the United States; that the said defendants acted as agents of the Peruvian Government in

the importation and sale of guano; that he (the witness) had particularly under his charge the freight department of their business, and was entirely familiar with the whole course of freight since the house of defendants had been established, having settled all the freights paid by the house during that time; that he had never, in any case, known a higher freight than twenty-five dollars per ton paid, or contracted to be paid by the defendants for a home freight, such as that contracted for in the charter party of the Shirley. They were paying twenty-six dollars and a half per ton for vessels to take orders at St. Thomas, when the Shirley was chartered, and had been doing so for a short time previously, and continued to do so for some time afterwards, but these charters belonged to a different class from those of vessels to take orders at Hampton Roads, as in the case of the Shirley, and the vessels were subject to a different ultimate destination, as had been explained by the witness, Nesmith & Brown. And the same witness further proved, that the defendants received a commission from the ship owners on the amount of freights, and that it was of course to their interest pecuniarily to increase the amount of such freights. He also proved that the ship Emily Farnham, was the ship spoken of by the witness Jones in his deposition produced and offered by the plaintiffs; and that the charter party of said ship was negotiated with the defendants in Baltimore, by Captain Parker, as part owner, agent, and master of said ship, and bore date June 19th, 1854. He likewise proved that Captain Parker duly elected under his charter to go direct to Callao in ballast, and produced the letter following announcing such election:—

Letter from Captain Parker to Barreda & Brother, his election.

PORTSMOUTH, N. H., *June* 24, 1854.

Gentlemen: The ship Emily Farnum will proceed from this port in ballast, direct for Callao, and have this morning telegraphed to you at 9.30 A. M. to that effect, in conformance of the charter party, to give you notice in one week from the signing of the same.

Respectfully, your obed't serv't,

WILLIAM PARKER.

Messrs. BARREDA & BROTHER, Baltimore, Md.

Cross-examined.

And the said witness being cross-examined, stated that the charters giving an additional compensation of five dollars per ton for the hire of the vessel out, commenced to be made June, 1854, and ended in August or September of that year: that the charters for $25, with the benefit of an advance were made previously in 1854, and neither kind of charter has been made since.

Evidence of D. S. Kendall, witness for Defendants.

The defendants then further proved by Mr. D. S. Kendall, that he was a merchant and ship owner of Boston, and had been for a long time engaged to a considerable extent in the California and Australia trade, both in letting vessels and sending out cargoes; that in 1853, he received 50 cents a foot, equal to twenty dollars a ton freight to Australia; does not remember particularly what freights were in April, 1854, to Australia, or whether there was much freight offering. For the last three to five years he has always earned from $12 to $15 a ton out to Australia, on an average net freights. The plaintiffs were in the Australian trade. A voyage out to Australia with a guano freight home was greatly preferable at twenty-five dollars per ton the homeward freight; to a voyage out, in ballast direct to Callao for guano, at thirty dollars per ton the round voyage. It was a great deal better, and particularly to persons engaged in the Australian trade.

Cross-examined.

And the said witness being cross-examined, stated that he had chartered several vessels from time to time to the defendants for the transportation of guano; that one of his vessels, either the Saredin or the Versailles was chartered to them in April, 1854, with a clause giving him the benefit of any advance in freights similar to the clause in the charter party of the Shirley.

Being asked by the plaintiffs' counsel whether he had not claimed such advance since the execution of the charter parties with the additional five dollar clause, and had not written the letter following to the defendants in respect thereto—

Letter from D. S. Kendall to Barreda & Brother.

NEW YORK, *May* 15, 1855.

Messrs. F. BARREDA & BROTHER, Baltimore.

Gentlemen: As one-half owner of the Am'n ship "Sweden," and acting as agent for the other moiety, I beg to quote extract from charter of said ship to your good selves, viz. to wit: "The ship to have the benefit of any advance in the guano freights made by the charterers in the United States before she finishes loading at the islands."

I presume it to be an established fact that since said charter was signed, other charters have had your signature attached to them at the rate of thirty dollars per ton.

I have thus endeavored to state what I deem my case in the matter of the ship "Sweden," and have only to add, that whatever course you may pursue, I have no threats of the law to press upon you, for I am determined you shall pay me what you please—and if your agent at this, T. W. Riley, Esq., would furnish one, I should be

perfectly willing to abide his decision; but as he evidently is not disposed to express an opinion, and as it would be in exceeding bad taste for me to ask him so to do, I can only leave the interest entrusted to me as well as my own in your hands.

Allow me to add, that I have no disposition to overreach, or (excuse the term) "Jew" you, and no one can value higher than myself the advantage derived by ship owners from the establishment of your house in the United States.

And leaving my ship's interests to your liberal construction,

I am, gentlemen,
Very respectfully,
Your obedient servant,
D. S. KENDALL.
One-half owner and agent for ship Sweden.

He replied that he undoubtedly had written the said letter, but still he did not think that he was entitled to the advance, as he thought the charter parties like that of the "Sweden" were entirely different contracts from those with the clause of $5 additional for the hire of the vessel out.

On being further asked whether he thought it proper to claim what he did not think he was entitled to, he replied, that as a merchant he thought he was bound to get what he could for the use of his vessel, and *and* had asserted his claim, to take his chances, if the defendants thought proper to give him the advance, and it would be observed that he had in his letter left it entirely with them.

The same witness being further cross-examined, stated that a voyage to Australia on owners' account, to a bad market, with a return freight of $25 per ton of guano would not be preferable to a round voyage at $30 per ton; but he also stated that the voyages of his vessel to Australia had always been attended with profit.

Re-examined in chief.

And the said witness being re-examined in chief, testified that the Sweden was chartered while she was on her voyage for owners' account from New York to San Francisco. She was chartered for the home voyage. The defendants wrote to the witness in reply to his letter aforesaid the following letter:

Letter from F. Barreda & Brother to D. S. Kendall.

[COPY.]

BALTIMORE, *May 16th*, 1855.

D. S. KENDALL, Esq., New York:

Dear Sir: Your favor of yesterday has been received, and we thank you for your kind terms towards us. We think that you are in error when you state that we have paid $30 freight for guano.

We took some vessels with the privilege of the use of the ship outwards and earnings, of course, to our favor. For this privilege we paid a remuneration entirely independent of the freight. This you can see by looking at any of the charters of this description. As consignees, our interests would be materially benefited by paying $30 instead of $24, but we don't see the justice of so doing. One owner of vessel under similar charter to yours seems, however, to think otherwise, and as it would not be right that your interest might be prejudiced through your liberal course towards us, we beg to state that should we be compelled by proper legal authority to pay a higher freight than the one you now get under similar charters to yours, we shall, of course, pay you the difference, to place you on the same footing.

Very respectfully,
Your obedient servants,
(Signed) F. BARREDA & BROTHER.

The defendants then further offered the log-book of the Shirley (produced by the plaintiffs on notice) in evidence, the following memoranda from which were submitted to the jury by consent, for greater convenience and brevity.

Memoranda from the Log-Book of the Shirley.

The Shirley left New York May 4, 1854. Arrived at Port Philip, Australia, August 10th, being a voyage out of 98 *days*.

She left Port Philip for Callao October 26th, 1854, having been occupied in discharging and re-loading cargo 77 *days*.

She arrived at Callao December 18th, 1854, being 53 *days* from Australia to Callao. She remained at Callao from Dec. 18th to 23d, 5 *days*.

She left Callao for the Chincha Islands Dec. 23d, 1854, and was ready to take guano on board Dec. 30, 1854.

On March 8th, 1855, finished loading, and on March 10th sailed for Callao, where she arrived March 12th.

March 19th. She sailed from Callao for Hampton Roads, and anchored in Hampton Roads June 22d, 1855, having been 97 *days* on voyage from Callao.

Log of October 16th and 21st shows 5 passengers from Sidney for Callao.

Oct. 20th, shows that she took the Royal Mail to Callao.

Oct. 23d, took Adams' Express for Callao, said to contain gold.

Log of Dec. 16, 1854, just before getting into Callao, speaks of taking up "cargo" from the lower hold.

And thereupon, the testimony on both sides having been concluded, the defendants under the exception by them reserved to the evidence on the part of the plaintiffs at the time of the offering of the same, asked the Court to exclude from the consideration of the

jury all the declarations and statements of James Nesmith and Vernon Brown, given in evidence by the plaintiffs as having been made by said Nesmith and Brown respectively to the witnesses testifying as to the same, in respect to the terms, conditions, or purposes of the charter parties negotiated by them respectively with the witnesses, and varying from or unauthorized by the authority and powers conferred on said Brown and Nesmith by the written instructions of the defendants to the said Brown and Nesmith, given in evidence by the defendants.

But the Court refused to exclude all the said declarations and statements of said Brown and Nesmith from the consideration of the jury, and determined the same to be admissible and competent evidence against the defendants, with the exception of such parts of said declarations and statements as were made by said Brown and Nesmith respectively to the said witnesses subsequent to the execution of the several charter parties in reference to which said declarations and statements were made; and the Court, with said exception, gave the said statements and declarations as evidence to the jury, to which refusal and determination of the Court, and the giving of the said statements and declarations to the jury, the defendants asked leave to except, and prayed the Court to sign and seal this their first bill of exceptions, which is accordingly done this fourth day of December, 1856.

WILLIAM F. GILES, [SEAL.]

Defendants' Second Bill of Exceptions.

And after the happening of the matters and things in the said first bill of exceptions stated, which are hereby made a part hereof, the plaintiffs offered to the Court the following prayers.

Plaintiffs' Prayers.

1. The plaintiffs pray the Court to instruct the jury, that if they find that the charter party of the ship Shirley, given in evidence, was executed by the defendants, and that the accounts given in evidence by the plaintiffs was furnished by the defendants to show the balance due under said charter party for freight upon her cargo delivered at the rate of $25 per ton, the plaintiffs are entitled to recover in this action said balance of account, and such further sum as the jury may find to have been the advance in the guano freights made by the charterers in the United States before the Shirley finished loading her cargo of guano at the Chincha Islands.

2. The plaintiffs further pray the Court to instruct the jury, that if they find that the defendants were in 1854, and since, the agents of the Peruvian Government, to charter vessels to bring guano from the Chincha Islands to the United States for sale, and that the exportation of such guano from Peru was a monopoly of the government, in which individuals were not permitted to engage, the cost to

the Peruvian Government of sending such guano by such vessels to the United States upon contracts made by the defendants in the United States within the periods mentioned in the foregoing prayer, shows the true rate of freight upon said guano within said periods.

3. That if the jury find that the charter party of the Shirley was executed by the defendants, and that it was performed by the plaintiffs, and shall also find that the defendants were, as agents of the Peruvian Government, importers of guano for several years before the date of said charter party, and as such agents executed other charter parties for such importations before said period, and continued after August, 1854, so to import, and that during the spring (and summer) of 1854, beside the charter party of the Shirley, they executed various other charter parties of the same kind, and shall find that in no other charters but these last was there any provision to pay an advance such as is provided in these, and shall find that between May and October, 1854, they executed the various charter parties offered in evidence, providing for the payment of five dollars in addition to $25 per ton in the manner stated in the said charters; and shall also find that this form of charter party was never adopted by the defendants before May, or after October, 1854, and shall also find that in no one of these last mentioned charters did they offer a ship for freight, or send on their own account any cargo, except the seven cases of segars spoken of by the witness Nesmith; and shall also find that in the negotiations leading to the execution of these last named charter parties, neither the ship owner nor the defendants proposed or contemplated sending the ship to any port in the Indian or Pacific Ocean other than Callao, except in the case of the ship Cleopatra, belonging to the witness Bangs, and as stated by him; and shall also find that in no instance beside that of the ship just mentioned, was the ship offered for freight by the owner thereof, or was cargo sent by him; and if they shall also find that the commercial firms of Nesmith & Sons, of New York, and Vernon Brown & Son, of Boston, mentioned in the evidence, were the agents of the defendants, and as such negotiated the last named and other charter parties offered in evidence in the cities of New York and Boston respectively, and that the elder Nesmith and Brown, the defendants' witnesses, made the declarations as to the objects of that form of charter party as stated by witnesses for the plaintiffs; and if the jury shall also find that in the negotiations between said agents of the defendants with the ship owners, as well as in the negotiations immediately with the defendants by the ship owners in Baltimore, down to the presentation of the forms of such charter parties, the negotiations were for a direct voyage to Callao in ballast. That then the jury may find that the object of such charter parties giving the $5 and $25, as before stated, was to clear the defendants from responsibility under the previous charters made by them at $25 a ton, with the privilege of the rise, and that it was a mere cover or sham to avoid responsibility under the Shirley's similar charter, and then

the jury may find that there was an advance in the guano freights made by the defendants in the United States before the Shirley finished loading at the Islands, within the meaning of those terms as contained in the charter party sued upon, and that the plaintiffs are therefore entitled to recover that advance, as well as the $25 stipulated in said charter.

And the defendants prayed the Court to give to the jury the instructions following:—

Defendants' Prayers.

1. The defendants, by their counsel, pray the Court to instruct the jury, that the true interpretation of the stipulation contained in the charter party, "the ship to have the benefit of any advance in the guano freights made by the charterers in the United States before she finished loading at the Islands," is, that the ship should have the benefit of any advance made by the charterers upon the inward voyage from the Islands to the United States, and that to enable the plaintiffs to recover beyond the balance of the account furnished by defendants to plaintiffs, and given in evidence, with interest, it is incumbent upon them to satisfy the jury that the defendants did, within the period covered by the stipulation, pay or agree to pay, such advance freights upon such inward voyage.

2. That the charter parties offered in evidence whereby twenty-five dollars per ton are stipulated to be paid for the transportation of guano from the islands to the United States, with five dollars additional per ton, as compensation for the vessels employed in performing their outward voyage to the islands, furnish no evidence of any advance within its terms of the charter party sued upon in this case.

3. That even if the charter parties referred to in the second prayer of the defendants be regarded merely as contracts for a direct voyage to Callao and the islands, and back, at thirty dollars freight per ton, they still furnish no evidence of any advance in freights, of which the plaintiffs under the clause of advance in this charter can avail themselves in this action.

4. That even if it be true that the contracts therein contained may be regarded as within the stipulations of the charter party sued on, in this case, yet if the jury shall find from the evidence that the Shirley, in making her voyage from Boston to Australia, and thence to Callao, was employed in transporting a large and valuable cargo, for owners' account, in earning freight by the transportion of mails or other cargo for third parties, the plaintiffs can entitle themselves to recover the additional five dollars per ton, which are claimed, only by accounting for such freights, and the value of the vessel's services, and that it is incumbent on them to prove the amount of the same.

5. That there is no competent evidence to show that a freight of $30 per ton, from the United to the Chincha Islands in ballast, and back with a cargo of guano, is an advance on a freight of $25 per

ton home from the islands, with the privilege of the outward voyage as enjoyed by the owners of the Shirley under their charter party.

6. That if the jury find that the charter parties of subsequent date to the 11th April, 1856, offered in evidence, were duly executed by the parties thereto, as the contracts by which they severally agreed to be bound in reference to the voyage therein provided for, then the jury are bound to exclude from their consideration all conversations or negotiations prior to, or contemporary with the execution of said charter parties, and relating to the same, no matter what they *they* may believe to have been the purposes or objects of the parties, or either of them, by whom said charters were entered into.

7. That the plaintiffs can, in no event, recover in this case the additional $5 claimed, or any part thereof, unless the jury shall find from the evidence that a voyage, in ballast, from the United States to Callao, at $5 per ton, gives a larger net freight or amounted to more in profit to the ship owners than the plaintiffs derived from the use and freight of the Shirley on her voyage to Australia, and thence to Callao.

But the Court refused to instruct the jury as so prayed by the plaintiffs or defendants, and rejected the plaintiffs' and defendants' said prayers, and in lieu thereof, gave to the jury the following instructions, viz:—

Court's Instructions.

SILSBEE & OTHERS
vs.
BARREDA & BROTHER.

1. If the jury find that the charter party of the Shirley, given in evidence, and was executed by defendants, and that the account given by plaintiffs was furnished by defendants, to show the balance due under said charter party for freight upon the cargo delivered, then the plaintiffs are entitled to recover in this action the balance stated to be due on the said account, and such further sum, if any, as the jury may find to have been the advance on the freights agreed to be paid by the defendants to any one, for bringing guano from the Chincha Islands to the United States, in charter parties executed by the said defendants in the United States, between the 11th day of April, 1849, and the day the jury shall find the Shirley finished loading at the Chincha Islands.

That in ascertaining whether any contract for advanced freight, within the meaning of the first instruction, was made by the said defendants during the period aforesaid, the jury are not confined to the consideration alone of the charter parties executed after the 11th April, 1854, but are to consider them in connection with all the evidence in the case; and if they shall find that the real contract, in some one or more of the charter parties, was a contract to bring guano from the Chincha Islands to the United States, at $30 per

ton for the guano delivered, and that the $5 clause was added to avoid any responsibility under the advance clause in the charter party of the Shirley, then the $ advance is an advance freight within the meaning of the first instruction.

3. The jury will exclude from their consideration of the case, the testimony of Parsons, Waterman and Emmons, and Thacher, as it is admitted that they are directly interested in the event of this suit; and also all declarations or admissions of Brown & Nesmith made subsequent to the execution of the several charter parties negotiated by them.

To which refusal to instruct the jury as by them prayed, as well as to the rejection of their said prayers, and the instructions so given by the Court to the jury, the defendants asked leave to except, and prayed the Court to sign and seal this their second bill of exceptions, which is accordingly done, this fourth day of December, 1856.

WILLIAM F. GILES. [SEAL.]

Defendants' 3d Exception.

And after the happening of the matters and things in the first and second bills of exception of the defendants, set forth and here made a part hereof, and after the giving to the jury by the Court of the instructions in said second bill of exceptions contained, the defendants prayed the Court to give the jury the instructions following:—

Defendants' 8th Prayer.

That even if the jury shall find from the evidence, as submitted to them by the Court in its instructions already given, that the amount paid, or contracted to be paid by the defendants to the parties and for the voyages mentioned, and referred to in the charter parties containing the $5 additional clause, produced in evidence by the plaintiffs, was not in fact paid or contracted to be paid according to the terms, conditions and provisions of said charter parties, but was contracted for or paid, or meant and intended to be contracted for and paid at the rate of thirty dollars per ton for the round voyage out to Calloa and the Chincha Islands, in ballast, direct, and home with guano, still said sum so paid is not an advance freight, within the meaning of the charter party sued on in this case.

(*Rejected.*)

But the Court refused to give the said instruction to the jury, to which refusal the defendants asked leave to except, and prayed the Court to sign and seal this their third bill of exceptions, which is accordingly done, this fourth day of December, 1856.

WILLIAM F. GILES. [SEAL.]

And now here, at this day, to wit, the sixth day of December, in the year of our Lord one thousand eight hundred and fifty-six, the

said Frederick L. Barreda and Philip Barreda produced to the Circuit Court here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid, of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, to be transmitted to the Supreme Court of the United States, to be held at the City of Washington, on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:—

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THE UNITED STATES OF AMERICA, ss.

The President of the United States to the Judges of the Circuit Court of the United States for the Fourth Circuit, in and for the Maryland District, greeting:—

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Court before you, or some of you, between Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Sanders, and William D. Pickman, plaintiffs; and Frederick L. Barreda and Philip Barreda, defendants, a manifest error hath happened, to the great damage of the said Frederick L. Barreda and Philip Barreda, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-six.

THO. SPICER,
Cl'k Circ't Ct.

Issued 6th December, 1856.

In pursuance whereof, and according to the form and effect of the Act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid

rendered, together with the said writ of error, are hereby transmitted to the said Circuit Court accordingly.

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The United States of America to Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George F. Sanders, and William D. Pickman, greeting:—

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the City of Washington on the first Monday in December next, pursuant to a writ of error filed in the Clerk's Office of the United States for the Fourth Circuit in and for the Maryland District, wherein Frederick L. Barreda and Philip Barreda are plaintiffs in error, and you are defendants in error; to show cause, if any there be, why the judgment rendered against the said Frederick L. Barreda and Philip Barreda in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal this 21st day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

WILLIAM F. GILES. [SEAL.]

We acknowledge notice of the above citation.

BROWN & BRUNE,
for Plaintiffs.

Writ of Error Bond.

Know all men by these presents, that we, Frederick L. Barreda, Richard B. Fitzgerald, and William Crichton, are held and firmly bound unto Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Saunders, and William D. Pickman, owners of the ship Shirley, and citizens of the State of Massachusetts, in the first and full sum of sixty-two thousand dollars, lawful money of the United States, to be paid to the said Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Sanders, and William D. Pickman, their certain attorney, heirs, executors, administrators, or assigns, to which payment well and truly to be made and done, we hereby bind ourselves, one and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 15th day of December, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas, at a Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, begun and held at the city of Baltimore, on the first Monday of November, in the year of our Lord one thousand eight hundred and fifty-six, the said Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Sanders, and William D. Pickman, by the judgment of the same Court recovered against Frederick L. Barreda and Philip Barreda, as well the sum of thirty thousand nine hundred and fifty-four dollars and sixty-two cents, for their damages by them sustained by reason of the non-performance of the promises and assumptions by the said Frederick L. Barreda and Philip Barreda before that time made, together with their costs and charges by them about their suit in that behalf laid out and expended.

And whereas, the said Frederick L. Barreda and Philip Barreda have sued out the writ of the United States of America, for the correcting of errors, and a citation directed to the said Benjamin H. Silsby, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Sanders, and William D. Pickman, to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, to show cause, if any there be, why the judgment so as aforesaid rendered as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties aforesaid in that behalf. Now the condition of the aforegoing obligation is such that if the said Frederick L. Barreda and Philip Barreda shall well and truly prosecute with effect their said writ of error, and pay unto the said Benjamin H. Silsbee, John H. Silsbee, Benjamin W. Stone, William Stone, George T. Sanders, and William D. Pickman, their certain attorney, heirs, executors, administrators, or assigns, the amount of the said judgment, interest, cost, and charges aforesaid, adjudged unto them by the said Circuit Court, and also all such damages, costs, and charges as may be awarded unto them by the said Supreme Court in case they, the said Frederick L. Barreda and Philip Barreda shall fail to make good their said plea; then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue in law.

FREDK. L. BARREDA, [SEAL.]
RICHD. B. FTZGERALD, [SEAL.]
WILLIAM CRICHTON. [SEAL.]

Signed, sealed, and delivered in presence of
J. W. B. WELLS.
JAMES S. STERET,
ED. NIEMANN.

Personally appeared S. T. Wallis in open Court, and made oath this 16th day of December, 1856, that the parties sureties on the

within bond are to the best of his knowledge and belief amply sufficient.

THO. SPICER,
Cl'k Cir. C.

Bond approved 16th December, 1856.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the Circuit Court aforesaid, I hereunto subscribe my name and affix the seal of the said Circuit Court, this day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

THO. SPICER,
Cl'k Cir. C.